

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,189

AMERICAN BAKERY & CONFECTIONERY WORKERS  
INTERNATIONAL UNION AND LOCAL UNION NO. 245,

ABC,

4924

*Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

United States Court of Appeals  
for the District of Columbia Circuit

GUY'S FOODS, INC.,

*Intervenor.*

FILED JAN 23 1967

No. 20,347

Nathan J. Paulson  
CLERK

GUY'S FOODS, INC.,

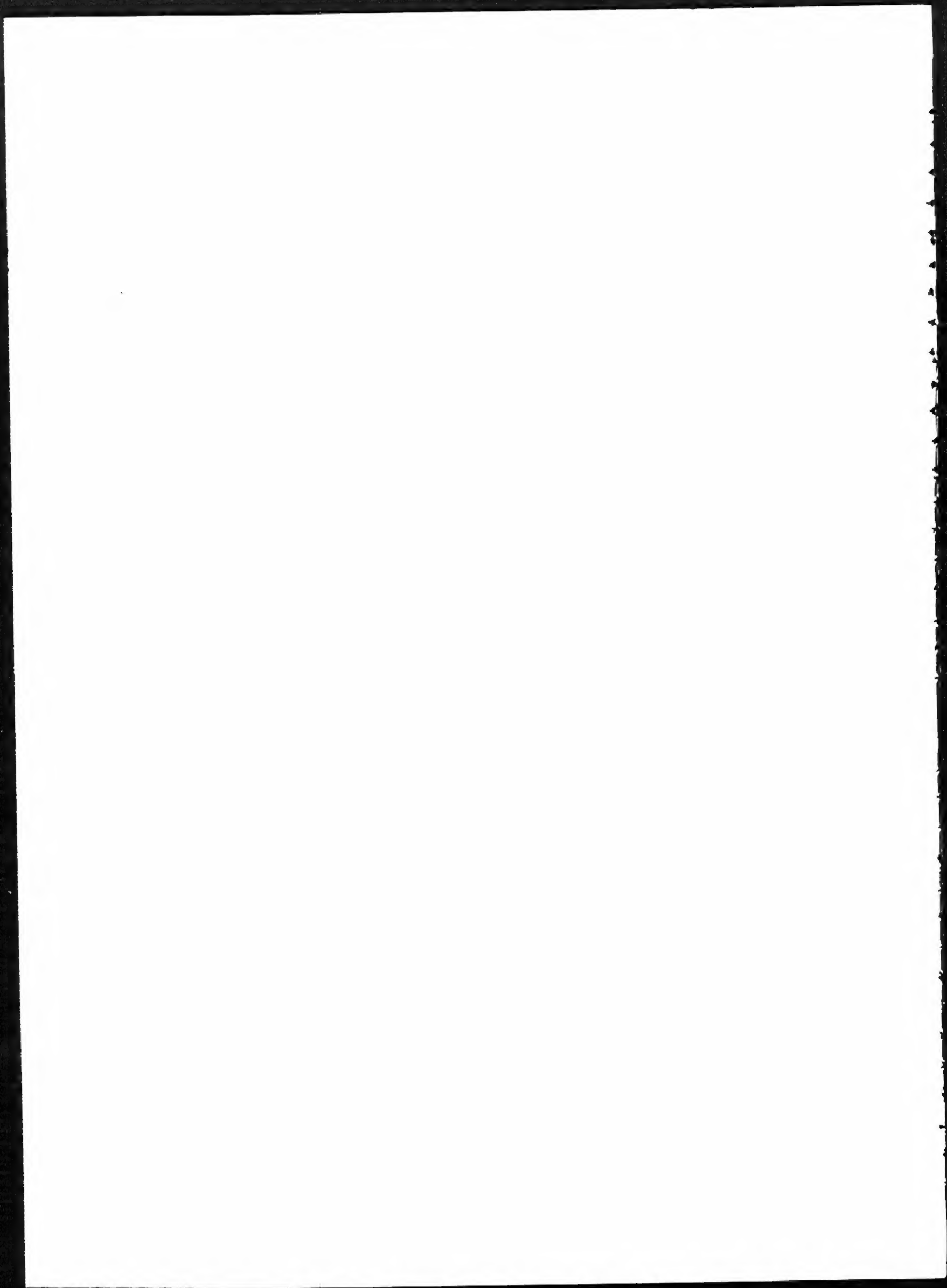
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

On Petitions to Review and On Cross-Petition  
to Enforce an Order of the  
National Labor Relations Board





# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20,189

---

AMERICAN BAKERY & CONFECTIONERY WORKERS  
INTERNATIONAL UNION AND LOCAL UNION NO. 245,  
ABC,

*Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

GUY'S FOODS, INC.,

*Intervenor.*

---

No. 20,347

---

GUY'S FOODS, INC.,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

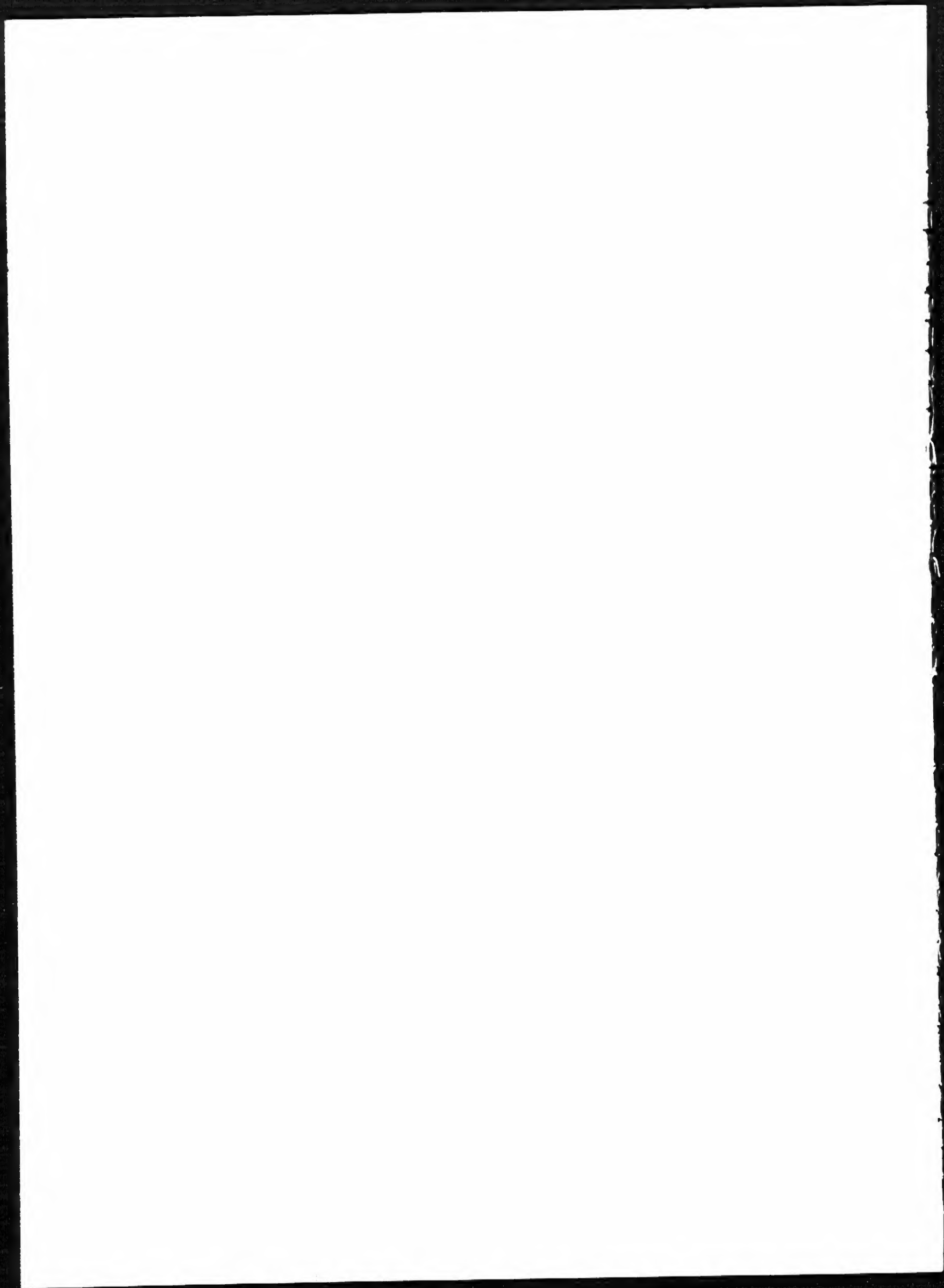
---

On Petitions to Review and On Cross-Petition  
to Enforce an Order of the  
National Labor Relations Board

---

JOINT APPENDIX

---



## INDEX

	<u>Record Page</u>	<u>J.A. Page</u>
Prehearing Conference Stipulation . . . . .		1
Prehearing Order . . . . .		4
Excerpts from Transcript of Proceedings . . . . .	1	4
<u>Witnesses:</u>		
Guy Caldwell		
Direct . . . . .	22	16
Babe Ruth Cameron		
Direct . . . . .	42	22
Jerry Haley		
Direct . . . . .	46	24
Mary Etta Jones		
Direct . . . . .	50	26
Guy Caldwell		
Direct . . . . .	53	27
Lucille Barnardi		
Direct . . . . .	70	29
Cross . . . . .	102	42
Robert Murphy		
Direct . . . . .	123	48
Cross . . . . .	128	51
Helen Mealy		
Direct . . . . .	129	51
Robert Louis Johnson		
Direct . . . . .	138	54
E. W. Hamilton		
Direct . . . . .	143	56
Cross . . . . .	147	58
Ruby Pardoe		
Direct . . . . .	156	60
Cross . . . . .	159	62

## Excerpts from Transcript of Proceedings (Cont'd.):

Witnesses:

	<u>Record Page</u>	<u>J.A. Page</u>
Maggie Sandifer		
Direct . . . . .	165	65
Cross . . . . .	173	69
Irma Adams		
Direct . . . . .	197	71
Cross . . . . .	206	73
Harry L. Browne		
Direct . . . . .	228	74
Guy Caldwell		
Direct . . . . .	247	83
Cross . . . . .	257	84
William R. Dummitt		
Direct . . . . .	270	86
Cross . . . . .	271	86
Pamela Addis		
Direct . . . . .	287	88
Cross . . . . .	290	89
Hudie Golden		
Direct . . . . .	292	90
Paul Seal		
Direct . . . . .	299	91
Cross . . . . .	317	99
Dorothy Draper		
Direct . . . . .	329	100
Robert Eugene Tibbits		
Direct . . . . .	334	102
Ina Fay Richardson		
Direct . . . . .	343	104
Cross . . . . .	355	111
John Peques		
Direct . . . . .	365	113
Cross . . . . .	370	115
Charles Thompson		
Direct . . . . .	371	115

## Excerpts from Transcript of Proceedings (Cont'd.):

<u>Witnesses:</u>	<u>Record Page</u>	<u>J.A. Page</u>
Kenneth Caldwell, Sr.		
Direct . . . . .	383	118
Cross . . . . .	395	125
Ina Fay Richardson		
Direct . . . . .	405	128
Cross . . . . .	406	128

General Counsel's Exhibits:

No. 1-II — Respondent's Answer . . . . .	129
No. 1-MM — Affidavit of Service of Copies of Decision and Direction of Election . . . . .	130
Decision and Direction of Election . . . . .	132
Direction of Election . . . . .	135
No. 1-NN — Request for Review and Oral Argument . . . . .	136
Argument . . . . .	139
No. 1-OO — Letter from Harry L. Browne to NLRB dated April 12, 1965 . . . . .	143
No. 1-PP — Telegram from Howard W. Kleebe dated 4-23-65 . . . . .	144
No. 1-QQ — Objections to Election dated May 6, 1965 . . . . .	145
No. 1-TT — Order Directing Hearing . . . . .	146
No. 2 — "Vote for Packers and Drivers Union" Sign . . . . .	148
No. 7 — Telegram to Mrs. Lucille Barnardi from Harold Richter . . . . .	149
No. 13 — Notice - Nite Shift . . . . .	150
Charging Party Exhibit No. 3 — Memo to All Employees from Frances & Guy . . . . .	151



<u>Respondent's Exhibits:</u>	<u>J.A. Page</u>
No. 2 — Excerpts from Agreement dated March 7, 1963 . . . . .	152
No. 3 — Letter from James R. Willard to Mr. Frank P. Barker, Jr., dated December 10, 1964 . . . . .	157
Letter from Frank P. Barker, Jr. to Mr. Guy Caldwell dated November 27, 1964 . . . . .	158
No. 4 — Excerpts from Agreement dated February 14, 1965 . . . . .	159
No. 8 — Decision and Order dated February 5, 1965 . . . . .	161
No. 9 — Letter from James R. Willard to Frank P. Barker, Jr., dated March 12, 1965 . . . . .	165
No. 13 — Letter from James R. Willard to Mr. Martin Sacks dated June 7, 1965 . . . . .	166
No. 14 — Letter from Frank P. Barker, Jr. to Mr. Harry L. Browne dated June 14, 1965 . . . . .	168
No. 15 — Letter from Harry L. Browne to Frank Barker, Jr., dated June 18, 1965 . . . . .	169
No. 16 — Letter from Jim Willard to Frank P. Barker, Jr., dated July 6, 1965 . . . . .	170
Trial Examiner's Decision dated January 7, 1966 . . . . .	171
Appendix — Notice to All Employees . . . . .	202
Decision and Order dated May 18, 1966 . . . . .	204

JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN BAKERY & CONFECTIONERY	:	
WORKERS INTERNATIONAL UNION AND	:	
LOCAL UNION NO. 245, ABC, AFL-CIO,	:	
Petitioners,	:	
v.	:	No. 20,189
NATIONAL LABOR RELATIONS BOARD,	:	
Respondent,	:	
and	:	
GUY'S FOODS, INC.,	:	
Intervenor.	:	
* * * * *		
GUY'S FOODS, INC.,	:	
Petitioner,	:	
v.	:	No. 20,347
NATIONAL LABOR RELATIONS BOARD,	:	
Respondent.	:	

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, hereby stipulate as follows with respect to the issues, the procedures, and the filing of a joint appendix.

I. THE ISSUES

A. In No. 20,347, the issues presented are as follows:

1. Whether the Board properly found that the Company (Guy's Foods, Inc.) violated Section 8(a)(1) of the Act by coercively

interrogating employees concerning their union activities, by electioneering on behalf of a labor organization herein called the Association (Association of Packers & Drivers Union), and by threatening employees with job reprisals and granting them benefits to discourage interest in the Bakery Workers (American Bakery & Confectionery Workers International Union and Local No. 245, ABC, AFL-CIO).

2. Whether the Board properly found that the Company assisted, contributed support to, and interfered with the administration of the Association, in violation of Section 8(a)(2) and (1) of the Act.

3. Whether the Board properly found that the Company discharged employee Ina Faye Richardson for her union activities, in violation of Section 8(a)(3) and (1) of the Act.

4. Whether the Board erred in refusing to permit respondent to relitigate in this proceeding matters litigated before the Board in Case No. 17-RC-4711.

5. Whether the Board's order is appropriate under the circumstances.

B. In No. 20,189, the issues presented are as follows:

1. Whether, on the record herein, the Board erred in not finding additional violations of Section 8(a)(1) and Section 8(a)(2) of the Act.

2. Whether the Board's order is valid and proper, and effectively remedies the Company's unfair labor practices.

C. In view of Guy's Foods, Inc. the following are also issues in No. 20,347:

1. Whether the Board erred in refusing to grant respondent and the Association a sixty (60) day "insulated" period after a timely representation petition for an inappropriate unit was dismissed.

2. Whether the Board erred in directing an election in Case No. 17-RC-4711 and in its holding that such election was not barred by a contract between the Association and respondent.



## II. THE JOINT APPENDIX

1. The record in these cases shall be reduced to a joint appendix to be comprised of the materials each party may designate, and each party will pay the printer directly for its share of the printing costs and mailing expenses. The Bakery Workers shall include in its designation the Board's Decision and Order, the Trial Examiner's Decision, this stipulation and the Court's order thereon. The Bakery Workers and the Company will share equally the cost of printing these four items.

2. The Board shall have responsibility for printing the joint appendix and filing it with the Court.

3. Forty (40) copies of the joint appendix shall be printed under this stipulation; the required number of copies to be filed with the Court and the remaining copies to be divided equally among the parties to the stipulation.

4. It is further agreed that any party or the Court, at or following the hearing in these cases, may refer to any portion of the original transcript of record or exhibits herein which has not been printed, to the same extent and effect as if they had been printed, or otherwise reproduced, it being understood that any portion of the record then referred to will be printed in a supplemental joint appendix if the Court so directs.

Dated at Washington, D. C.  
this 8th day of November, 1966

/s/ Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS  
BOARD

Dated at Washington, D. C.  
this        day of November, 1966

/s/  
Counsel for American Bakery &  
Confectionery Workers Interna-  
tional Union and Local Union No.  
245, ABC, AFL-CIO

Dated at Kansas City, Missouri  
this        day of November, 1966

/s/  
Counsel for Guy's Foods, Inc.

---

[Filed November 25, 1966]

PREHEARING ORDER

Before: Leventhal, Circuit Judge,  
in Chambers.

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

In the Matter of:

GUY'S FOODS, INC.,

and

AMERICAN BAKERY AND CONFECTIONERY  
WORKERS INTERNATIONAL UNION, AFL-CIO,  
LOCAL NO. 245.

Case No. 17-CA-2602

GUY'S FOODS, INC.,

and

AMERICAN BAKERY AND CONFECTIONERY  
WORKERS INTERNATIONAL UNION, AFL-CIO.

Case No. 17-CA-2632

-----  
 GUY'S FOODS, INC.,

and

AMERICAN BAKERY AND CONFECTIONERY  
 WORKERS INTERNATIONAL UNION, AFL-CIO,

and

ASSOCIATION OF PACKERS AND DRIVERS  
 UNION.

Case No. 17-CA-2675

-----  
 GUY'S FOODS, INC.,

and

AMERICAN BAKERY AND CONFECTIONERY  
 INTERNATIONAL UNION, AFL-CIO, and  
 INTERNATIONAL BROTHERHOOD OF TEAM-  
 STERS, CHAUFFEURS, WAREHOUSEMEN AND  
 HELPERS OF AMERICA, JOINT COUNCIL 56,  
 JOINTLY

Case No. 17-RC-4711

and

2 ASSOCIATION OF PACKERS AND DRIVERS  
 UNION.

Hearing Room,  
 1200 Rialto Building,  
 Kansas City, Missouri,  
 Tuesday, July 20, 1965.

The above-entitled matter came on for hearing, pursuant to notice,  
 at 10:00 o'clock, a.m.

BEFORE:

JOSEPH I. NACHMAN, Examiner.

\*

\*

\*

\*

\*

5

### PROCEEDINGS

TRIAL EXAMINER NACHMAN: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board  
 in the matter of Guy's Foods, Inc., American Bakery and Confectionery

Workers International Union, AFL-CIO, Association of Packers and Drivers Union, Case No. 17-CA-2602, 2632, 2675, 17-RC-4711.

The Trial Examiner conducting this hearing is Joseph I. Nachman, N-a-c-h-m-a-n.

I will ask the parties to state their appearances for the record.

For the General Counsel.

MR. BRUCKNER: For the General Counsel, William H. Bruckner and Gerald A. Wacknov, 1200 Rialto Building, 906 Grand Avenue, Kansas City, Missouri.

TRIAL EXAMINER: For the Respondent.

MR. WILLARD: Harry L. Browne and myself, James R. Willard, of the firm Spencer, Fane, Britt & Browne, 1000 Power & Light Building, Kansas City, Missouri.

TRIAL EXAMINER: American Confectionery Workers.

MR. WHIPPLE: C. David Whipple, 1108 Rialto Building, Kansas City, Missouri.

MR. RICHTER: Harold Richter, International Representative for A.B.C., 384 Cedar Street, Fond du Lac, Wisconsin.

TRIAL EXAMINER: For the Association of Packers and Drivers.

6 MR. BARKER: Frank P. Barker, Jr., 820 Home Savings Building, Kansas City, Missouri.

\* \* \* \* \*

7 (The documents above referred to were marked General Counsel's Exhibits 1-A through 1-UU for identification and received in evidence.)

MR. BRUCKNER: At this time, counsel for the General Counsel would like to amend the complaint pursuant to notice of intention to amend the complaint, Exhibit 1-JJ in the formal documents, complaint in 17-CA-2675.

TRIAL EXAMINER: What do you wish to amend?

MR. BRUCKNER: By adding to Paragraph V of that complaint, Sub-paragraph C, "grant employees a wage increase during the pendency of a

question concerning representation for the purpose of influencing its employees' choice between the incumbent union and petitioning union." This was issued July 15 and served upon all parties on that date.

TRIAL EXAMINER: You mean your notice of intention to amend?

MR. BRUCKNER: Yes, sir.

8 TRIAL EXAMINER: Any objection?

MR. WILLARD: I have no objection to amending the complaint. I would object unless they specify the date this increase was granted. I believe they should be at least that specific.

TRIAL EXAMINER: Would you furnish counsel that date?

MR. BRUCKNER: July 9, 1965, Kansas City, Missouri; July 16, 1965, Wichita, Kansas.

TRIAL EXAMINER: That was last week?

MR. BRUCKNER: Yes, sir.

MR. WHIPPLE: No objection by the Charging Party.

TRIAL EXAMINER: The complaint will be amended accordingly.

MR. WILLARD: I would ask your denial be extended to include the intended complaint.

TRIAL EXAMINER: Yes.

MR. BRUCKNER: At this time, counsel for the General Counsel moves to strike Paragraphs V and VI from Respondent's answer received on July 13, 1965, to Complaint No. 2675. It is our position --

TRIAL EXAMINER (interrupting): Which paragraphs to the complaint does that answer deal with?

MR. BRUCKNER: Respondent's answer, I believe, in Paragraphs V and VI --

TRIAL EXAMINER (interrupting): Do you have a copy of it?

MR. BRUCKNER: Yes, sir. Can we go off the record?

9 TRIAL EXAMINER: All right, off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. BRUCKNER: In support of this motion, the General Counsel



urges as follows: Material alleged in Paragraphs V and VI of the Respondent's answer is irrelevant and immaterial to the issues to the instant proceeding. Respondent seeks, apparently, by his paragraphs [in] his answer to litigate the question concerning representation, which was litigated in the representation case, 17-RC-4711, that is consolidated in these proceedings.

I specifically call the Trial Examiner's attention to Footnote 3 in the Regional Director's decision and direction of election on April 1st. It is Exhibit 1-MM —

TRIAL EXAMINER (interrupting): Why are these case numbers referred to in the Respondent's answer?

MR. BRUCKNER: I think the Respondent will agree on or about September 10, 1964, the Charging Party, or its representative locals in the instant proceeding, filed three petitions for certification as bargaining agent for three separate units of Respondent's employees. I believe these units concerned Respondent's plants at Wichita, Kansas; Kansas City, Missouri; and Omaha, Nebraska.

On February 5, 1965, the Regional Director dismissed the petitions on the grounds that petitioners failed to establish an appropriate unit. On 10 or about February 26, 1965, as is shown in the formal papers, the Petitioner, Charging Party, in these proceedings filed another petition jointly with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

In further support of my motion, I would point out that in this case, the Board has litigated the question concerning representation. I call the Trial Examiner's attention to Exhibit 1-PP wherein the Board denied the Employer's request for review regarding the Regional Director's decision of direction of election of April 1, 1965. Mr. Trial Examiner, this is clearly not the proper proceeding to litigate the question concerning representation. The Respondent will not be deprived of due process on this issue, because the Respondent will have the opportunity to litigate the question concerning representation, if and when a subsequent 8(a)(5)

charge would be filed. And it is my understanding that an 8(a)(5) complaint is the proper place for the Respondent to litigate the question concerning representation if it has already been denied by the Board.

I think the formal papers themselves show that for the purposes of this proceeding where we have three unfair labor practices and consolidated objections case, the question concerning representation is exclusively presumed, that is, for the purposes of these proceedings. Finally, General Counsel submits that as a matter of law, the allegations in Paragraphs V and VI of Respondent's answer do not constitute an affirmative defense. Therefore, for the foregoing reasons, we ask the Trial Examiner to strike these two paragraphs.

MR. WHIPPLE: On behalf of the A.B.C., we would like to join in this motion with the General Counsel, and urge it be sustained, and urge these Paragraphs V and VI of the Respondent's answer be stricken. I believe the General Counsel has stated the reasons very thoroughly, especially in regard to the fact there has been a direction of election, which this particular point was ruled upon and a request for review was denied, and we believe this issue cannot be litigated at this time.

TRIAL EXAMINER: Go ahead.

MR. WILLARD: There is nothing in the Board's Rules and Regulations, or in the Act itself, which requires us to plead an affirmative defense. We would be free to raise this as a defense during the course of the hearing, and the motion to strike would serve no worthwhile purpose.

TRIAL EXAMINER: You have pleadings?

MR. WILLARD: We have pled this issue as it would be an appropriate matter to consider during the course of an 8(a)(5). It would be our position, where it is relevant to another unfair labor practice proceeding, we may raise matters relative to another representation case.

12 TRIAL EXAMINER: What issue before me does this relate to?

MR. WILLARD: May I pick up where the General Counsel left off on the question of the previous petitions, the dismissal on February 5th, and the refiling on February 26? Between those two dates, the collective

urges as follows: Material alleged in Paragraphs V and VI of the Respondent's answer is irrelevant and immaterial to the issues to the instant proceeding. Respondent seeks, apparently, by his paragraphs [in] his answer to litigate the question concerning representation, which was litigated in the representation case, 17-RC-4711, that is consolidated in these proceedings.

I specifically call the Trial Examiner's attention to Footnote 3 in the Regional Director's decision and direction of election on April 1st. It is Exhibit 1-MM —

TRIAL EXAMINER (interrupting): Why are these case numbers referred to in the Respondent's answer?

MR. BRUCKNER: I think the Respondent will agree on or about September 10, 1964, the Charging Party, or its representative locals in the instant proceeding, filed three petitions for certification as bargaining agent for three separate units of Respondent's employees. I believe these units concerned Respondent's plants at Wichita, Kansas; Kansas City, Missouri; and Omaha, Nebraska.

On February 5, 1965, the Regional Director dismissed the petitions on the grounds that petitioners failed to establish an appropriate unit. On 10 or about February 26, 1965, as is shown in the formal papers, the Petitioner, Charging Party, in these proceedings filed another petition jointly with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

In further support of my motion, I would point out that in this case, the Board has litigated the question concerning representation. I call the Trial Examiner's attention to Exhibit 1-PP wherein the Board denied the Employer's request for review regarding the Regional Director's decision of direction of election of April 1, 1965. Mr. Trial Examiner, this is clearly not the proper proceeding to litigate the question concerning representation. The Respondent will not be deprived of due process on this issue, because the Respondent will have the opportunity to litigate the question concerning representation, if and when a subsequent 8(a)(5)



charge would be filed. And it is my understanding that an 8(a)(5) complaint is the proper place for the Respondent to litigate the question concerning representation if it has already been denied by the Board.

I think the formal papers themselves show that for the purposes of this proceeding where we have three unfair labor practices and consolidated objections case, the question concerning representation is exclusively presumed, that is, for the purposes of these proceedings. Finally, General Counsel submits that as a matter of law, the allegations in Paragraphs V and VI of Respondent's answer do not constitute an affirmative defense. Therefore, for the foregoing reasons, we ask the Trial Examiner to strike these two paragraphs.

MR. WHIPPLE: On behalf of the A.B.C., we would like to join in this motion with the General Counsel, and urge it be sustained, and urge these Paragraphs V and VI of the Respondent's answer be stricken. I believe the General Counsel has stated the reasons very thoroughly, especially in regard to the fact there has been a direction of election, which this particular point was ruled upon and a request for review was denied, and we believe this issue cannot be litigated at this time.

TRIAL EXAMINER: Go ahead.

MR. WILLARD: There is nothing in the Board's Rules and Regulations, or in the Act itself, which requires us to plead an affirmative defense. We would be free to raise this as a defense during the course of the hearing, and the motion to strike would serve no worthwhile purpose.

TRIAL EXAMINER: You have pleadings?

MR. WILLARD: We have pled this issue as it would be an appropriate matter to consider during the course of an 8(a)(5). It would be our position, where it is relevant to another unfair labor practice proceeding, we may raise matters relative to another representation case.

12 TRIAL EXAMINER: What issue before me does this relate to?

MR. WILLARD: May I pick up where the General Counsel left off on the question of the previous petitions, the dismissal on February 5th, and the refiling on February 26? Between those two dates, the collective

bargaining agreement in force between the Respondent and the Association of Packers and Drivers Union expired or had a terminal date of February 14, 1965.

TRIAL EXAMINER: What issue is there before me with respect to those facts?

MR. WILLARD: It has been suggested that perhaps our answer might be better understood if I at this time made a motion to amend it by adding to Paragraph VI the sentence, "Even if unfair labor practices be found, they cannot be used as a basis of setting aside the election held in Case No. 17-RC-4711 for the reasons set forth in Paragraphs V and VI of the answer." We would also amend our answer in Case No. 17-CA-2632 to add to that answer, Paragraphs V and VI, as I have just amended. So it reaches not only the question of unfair labor practices, but more significant, it reaches the question of whether this Act could be used to set aside the election held in 4711.

TRIAL EXAMINER: We are raising the issue that we were improperly denied an opportunity to negotiate a collective bargaining unit with  
13 the certified unit.

TRIAL EXAMINER: Assuming that is true.

MR. WILLARD: The allegations in the complaint in 2362 and [2675] arise in large out of certain meetings held with the Packers and Drivers, including to eject the agreement between them and the election held on May 5, 1965. We are saying these facts could never have happened but for the improper refusal to grant the parties an insulated period for bargaining purposes.

MR. BROWNE: May I add this, if the Examiner please? As I understand it, this is a consolidated complaint. It consolidates a number of separate unfair labor practice charges as well as the objections to the election in Case No. 17-RC-4711. This —

TRIAL EXAMINER (interrupting): My function connected with the representation is very limited, namely, whether there was any conduct affecting the results of the election.

MR. BROWNE: This is correct, and we feel the proper place to raise the issue we are trying to raise is in this proceeding. We don't have to be delegated to an 8(a)(5) proceeding to raise the question, which is an important answer to the Respondent as well as the Association. We say this particularly with respect to the objections of the elections which this Trial Examiner must determine, but for the failure of the Regional Office to provide a proper insulated period within the meaning of the De-

14 luxe Metal Case and the Mar-Jac Poultry Company Case, there wouldn't be any election that was necessary at all.

TRIAL EXAMINER: You mean he improperly directed an election?

MR. BROWNE: This is correct, and we are trying to trace that issue. If this Trial Examiner finds it was improperly directed, we feel the objections to the elections are mute. This is why we are raising the objection in this case. This is the reason for Mr. Willard's answer to provide, even though we would assume there were unfair labor practices. Certainly it is within the province of this Examiner to —

TRIAL EXAMINER (interrupting): Didn't you raise that issue before the Board?

MR. BROWNE: We did raise the issue, and, of course —

TRIAL EXAMINER (interrupting): The Board ruled on it?

MR. BROWNE: Correct. I think the Trial Examiner knows, General Counsel knows, we don't have any direct appeal from a representation case.

TRIAL EXAMINER: You do have an appeal to the Board?

MR. BROWNE: Yes, there isn't any question about that. We are trying to make a record here, and now we say this —

TRIAL EXAMINER (interrupting): Isn't your record already made?

MR. BROWNE: No, it isn't, because we want to argue that point in this proceeding.

15 TRIAL EXAMINER: Didn't you argue it before the Board?

MR. BROWNE: The argument that we made before the Board and the Board's denial of our request for review is not appealable to the

courts. What happens here in this proceeding is appealable to the courts, and we want to raise the issue in this proceeding.

TRIAL EXAMINER: Suppose I agreed with you. Suppose I thought the Regional Director improperly directed an election and the Board improperly denied your appeal. What could I do about it?

MR. BROWNE: You could bar any evidence with respect to the objections to the election which were raised and consolidated with this proceeding.

TRIAL EXAMINER: Wouldn't I, then, in effect, overrule the Board?

MR. BROWNE: I think that you may be overruling the Board, but this has nothing to do with the Respondent's right to get this as a matter of record for the basis of an appeal. If, for example, you felt duty bound not to overrule the Board, then we would have a record on which an appeal to the courts could be made.

TRIAL EXAMINER: I don't think that issue properly belongs in this case. I am striking Paragraphs V and VI, as amended.

\* \* \* \* \*

16 MR. BROWNE: May we have an exception to your ruling, of course?

TRIAL EXAMINER: You know the rules well enough that you have automatic exceptions to all rulings.

MR. BROWNE: We would offer to prove in connection with the Trial Examiner's ruling that for reasons stated in the previous representation cases, to which reference has already been made, that the Board improperly disregarded the rights of the employer and the Association with respect to holding an election, and that for that reason —

TRIAL EXAMINER (interrupting): Are you making this as an offer of proof?

MR. BROWNE: Yes.

TRIAL EXAMINER: This is not the proper time. The offer will be stricken from the record. When you put on your case, you can tender what you wish.

MR. BROWNE: I take it the offer of proof is rejected?



TRIAL EXAMINER: I am not ruling on it now. I am striking it from the record.

MR. WILLARD: I would like to move at this time and offer in writing for the convenience of the parties — I might read it into the record.

"Comes now Respondent, Guy's Foods, Inc., by its attorneys, and moves to strike purported 8(a)(2) allegations of Paragraph VI, Sub A, Sub  
17 B, Sub C, and Sub D of the complaint in Case No. 17-CA-2675 on the grounds that the identical allegations in Case No. 17-CA-2632, Paragraph V, Sub D, E, F, and G thereof, consolidated for hearing with the instant case, alleges that such conduct is an 8(a)(1) violation, not an 8(a)(2) violation; that in the alternative, the General Counsel show cause why 8(a)(1) allegations in Case No. 17-CA-2632 become 8(a)(2) allegations in Case No. 17-CA-2675."

We think we are entitled either to have this sheer repetition stricken from the complaint or a full answer or full explanation from the General Counsel why on one day he thinks it is only 8(a)(1) and the next day he thinks it is 8(a)(2). It is either 8(a)(1) or 8(a)(2).

TRIAL EXAMINER: You think it can't be both?

MR. WILLARD: It may be both, but the General Counsel alleged 8(a)(1) originally, subsequently, he says this is really 8(a)(2), and we would like to know why. We don't think it is proper, but if it is, we would like to know why he changed his mind.

TRIAL EXAMINER: What do you have to say about that?

MR. BRUCKNER: Well, the counsel for the General Counsel opposes the motion to strike. I fail to see why the reason General Counsel alleges a certain act is either an 8(a)(1) or 8(a)(2) violation is questioned here. Further, I think the formal exhibits will show that in Complaint No. 2632 we had just an 8(a)(1) charge. In Complaint No. 2675, which was  
18 filed on May 6 and which encompassed conduct going back to, I believe, about December when we had an 8(a)(1) and an 8(a)(2) charge. I should also add that —

TRIAL EXAMINER (interrupting): In other words, your position at

the time of the issue of the complaint of 2632, you only had an 8(a)(1)?

MR. BRUCKNER: Yes, sir. I should also like to add that any issues that are being litigated in the same proceeding here, I fail to see how in any way it would prejudice the Respondent further. I am sure, as the Trial Examiner is aware, there are very few acts which are looked upon to be per se violations. In other words, when the investigation of the charge in 2675 has revealed more evidence, we believe it will place certain acts of the Respondent in the 8(a)(2) category rather than 8(a)(1).

MR. WILLARD: If I believe I am being allowed to respond at the present time, and the comment that they had just an 8(a)(1) charge is what I believe to be an attempt to ignore the facts of the Labor Act. If investigation reveals the Commission of unfair labor practice is not alleged in the charge, that the charge may and properly should be amended.

MR. BROWNE: This was a charge alleging an 8(a)(2) anyway.

MR. WILLARD: The General Counsel is doing nothing but attempting to blackjack the Respondent. They should strike the 8(a)(1) allegation or the 8(a)(2).

TRIAL EXAMINER: Suppose they struck the 8(a)(1) and I found the 8(a)(2)?

MR. WILLARD: You might have to find the 8(a)(1) along with it, but it serves no purpose to have them alleged in both complaints.

TRIAL EXAMINER: Does it do you any harm?

MR. WILLARD: We believe it creates a clear effort to make it clear that the Respondent has a period in separate violations alleged separately.

TRIAL EXAMINER: Does it in any way affect your defense of the case?

MR. BROWNE: Yes, it does, if the Examiner please.

Will you mark this Respondent's Exhibit —

TRIAL EXAMINER (interrupting): This is not going on the record yet. Tell me what we have.

MR. BROWNE: If I may, I am going to have this exhibit marked.

TRIAL EXAMINER: At the proper time, you will have it marked. It will not be marked at this time.

MR. BROWNE: In answer to the General Counsel's statement that they may have uncovered additional evidence than was originally alleged in the 8(a)(1) complaint, this is not true.

MR. BRUCKNER: Pardon me?

20 MR. BROWNE: This is not true. We have a letter from the Board, which I intended to mark as an exhibit, which states as follows: —

MR. BRUCKNER (interrupting): I object to that.

TRIAL EXAMINER: Be seated.

MR. BROWNE: Will you review this proposed settlement again and advise me whether it can be approved if litigation before a Trial Examiner cannot be avoided, underscored? I am recommending to the Regional Director that the two cases issued in 17-CA-2675 allege employer's violation of Section 8(a)(5) of the Act.

MR. BRUCKNER: May I ask the date of that letter?

MR. BROWNE: June 7, 1965, and it was sent before the Labor Board issued its 8(a)(2) complaint, as of that date —

TRIAL EXAMINER (interrupting): It was sent after the issuance of the complaint?

MR. BROWNE: Yes, sir. As of that time, the Board was aware of its evidence, and it stood pat on the 8(a)(1) complaint, but because of Respondent's failure to accept the settlement, the Board has issued an 8(a)(2). What we want to know, is this what is the theory? What is the issue that we have got to meet in an 8(a)(2) complaint when before the same facts alleged an 8(a)(1)? We need this for our own information. What arose that requires us now to meet an 8(a)(2) when there was an 8(a)(1) before under the same set of allegations in the complaint?

21 TRIAL EXAMINER: I think all you need to be prepared to show is the conduct alleged in the complaint did not occur.

I will deny the motion. Do you want this to be made a part of the record?

MR. WILLARD: Yes, sir.

\* \* \* \* \*

22

GUY CALDWELL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCKNER:

Q. State your name and address. A. Guy Caldwell, 9250 Canterbury, Shawnee Mission, Kansas.

Q. What is your position? A. President of Guy's Foods.

Q. Are you also the founder of the corporation? A. Yes.

MR. BRUCKNER: At this time, I move for leave to examine the witness under 43(b) of the Federal Rules of Procedure.

MR. BROWNE: We would object unless the witness appears to be hostile. The mere fact he is president doesn't show his testimony will be such.

TRIAL EXAMINER: I think you misread the rules.

You may proceed.

23

Q. (By Mr. Bruckner) Mr. Caldwell, do you still maintain an active interest in the business? A. Yes, sir.

Q. Would you say you exercise close supervision over all aspects of the business? A. Pretty close, yes, sir.

Q. Now, do you recall the representation election held by the National Labor Relations Board at the various locations of your company on May 5, 1965? A. Yes, sir.

Q. Mr. Caldwell, what plants did employees vote at? A. Omaha, Wichita, and Kansas City.

Q. And how did the rest of the employees vote, to the best of your knowledge? A. By mail.

TRIAL EXAMINER: You mean those three plants voted by appearing in person at a polling booth?

MR. BRUCKNER: Yes, sir. I am sure Respondent will agree that



the appropriate unit in this case is all of the Respondent's employees.

MR. WILLARD: All production and maintenance employees.

TRIAL EXAMINER: The direction of election is in evidence.

Q. (By Mr. Bruckner) Were you in Wichita, Kansas, prior to the representation election? A. Yes, sir.

24 Q. And when did you go to Wichita, sir? A. I believe it was on a Tuesday before the election. It was a day or two before.

Q. This would be May 4th? A. I think so, yes.

Q. At that time, did you transport any election materials for the Association of Packers and Drivers from Kansas City to Wichita? A. I took some signs. I don't know if they would be considered election materials. I took some signs with me.

MR. BRUCKNER: May I have this marked for identification?

TRIAL EXAMINER: GC-2.

(The article above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Bruckner) I hand you what has been marked General Counsel's Exhibit No. 2 for identification, purporting to be a "Vote for Packers and Drivers Union" sign, and ask you if you observed any of those signs in Wichita or Kansas City prior to the election. A. Yes, I did.

TRIAL EXAMINER: You say you transported some signs. Is that what you transported?

THE WITNESS: Yes. I might add I didn't know I transported them. I didn't see them until I got them to Wichita.

25 MR. BRUCKNER: At this time, General Counsel offers into evidence General Counsel's Exhibit No. 2.

\* \* \* \* \*

(The article above referred to, heretofore marked General Counsel's Exhibit No. 2, was received in evidence.)

Q. (By Mr. Bruckner) When you were in Wichita, sir, did you have a conversation with any supervisors about the signs? A. Yes.

MR. WILLARD: Objected to, not relevant to any allegations in the complaint.

TRIAL EXAMINER: Overruled.

Q. (By Mr. Bruckner) What supervisors did you talk to? A. We have a lady by the name of Helen — what is her last name? I have forgotten her last name. She is a supervisor of the shipping department. She had one of the signs. I was in the office and she asked if it would be all right for her to wear the sign.

Q. What did you say? A. I told her I didn't know for sure whether it would be all right or not. About two hours later she came in the office and she said she felt she should not be wearing the sign. She thought she should take it off. I said, "O.K., if that is the way you feel."

26 TRIAL EXAMINER: What did you do with those signs?

THE WITNESS: I gave them to my brother, Kenneth, and he gave them to the employees.

Q. (By Mr. Bruckner) Now, Mr. Caldwell, since the representation election, has your corporation granted a wage increase? A. The wage increase was granted before the election. It was granted between February 5th and February 14th. We paid them recently.

TRIAL EXAMINER: They were paid recently?

THE WITNESS: Just last week.

Q. (By Mr. Bruckner) Did you grant this increase without consulting with the incumbent union at that time? A. Did I grant the increase?

Q. Did the corporation grant the increase without consulting the incumbent union? A. I think the words "granted" and "paid" should be made clear. The wage increase was worked out at a bargaining session back in February, and the increase was not paid —

Q. (Interrupting) This bargaining session was prior to the time the representation petition in the current case was filed, is that not correct? It was prior to February 26, 1965? A. Yes, sir.

Q. When was this increase paid, sir? A. Within the last two or three weeks.

27 Q. Was it paid at all the Respondent's plants at one time, sir?

A. No, sir.

Q. And when was it paid in Kansas City? A. I believe it was paid the week of July 9th. In Wichita it was paid the following week.

Q. What about Omaha? A. It was paid the same time as Kansas City.

Q. What about Tulsa, Oklahoma? A. When Wichita was paid.

\* \* \* \* \*

Q. Mr. Caldwell, are you familiar with the employees, do you know the employees who acted as observers for the Packers and Drivers and the American Bakery and Confectionery Workers Union at the time of the election? A. I know the ones in Kansas City.

Q. Who are the ones in Kansas City? A. There was Irma Adams.

Q. For what union did she act as an observer? A. The Drivers and Packers.

28 Q. Go on, please. A. And Lois Behymer.

Q. Would you spell that? A. B-e-h-y-m-e-r, who acted as observer for the American Bakery and Confectionery Workers and Teamsters; Lucille Bernardi, and the last name is [Jones]. but I can't remember the first name.

Q. Would that be Elva Jones? A. Right.

Q. Do you know whether or not any of these employees were paid for their time spent as observers by Guy's Foods, Inc.? A. Yes, it was called to my attention some were and some were not.

Q. What employees were paid after the election? A. Irma Adams and Lois Behymer.

Q. This was the next paycheck after the election? A. I think that is right.

Q. What employees were paid later? A. Lucille Bernardi was paid later.

Q. What about Elva Jones? A. She hasn't been to work for a couple of months, and she will be paid when she returns to work.

Q. She is on sick leave? A. Yes, sir.

Q. Calling your attention, sir, to March 3, 1965, on or about that date were you aware that your employees were circulating the petition  
29 around the plant in Kansas City? A. No, sir.

Q. Did you ever become aware that this petition had been circulating? A. Yes.

Q. When did you become aware of that? A. After they held a meeting.

Q. What date was that? A. About the same day.

TRIAL EXAMINER: What month and what day?

THE WITNESS: It was about March 3d, I am not sure. That may be the day.

Q. (By Mr. Bruckner) About these signs, you say you didn't know when you took the signs to Wichita that they were election signs until you arrived in Wichita? A. She gave me these.

Q. Who? A. Irma Adams. She gave them to me in a white envelope and she said, "Take these down and given them to one of the employees", and I said, "Fine." After I got there, I knew what they were.

Q. Then you gave them to your brother and he gave them to the employees? A. Yes.

TRIAL EXAMINER: You knew what they were when you gave them  
30 to your brother?

THE WITNESS: Yes, sir.

\* \* \* \* \*

#### DIRECT EXAMINATION

BY MR. WHIPPLE:

\* \* \* \* \*

37 Q. I would like to hand you Exhibit CP-3 and will you tell us if you can identify this exhibit? A. Yes.

Q. You are familiar with it? A. Yes.

\* \* \* \* \*

Q. (By Mr. Whipple) Was it sent to all of your employees at your direction? A. Yes, sir.

\*

\*

\*

\*

\*

38

(The document above referred to, heretofore marked Charging Party's Exhibit CP-3, was received in evidence.)

Q. (By Mr. Whipple) Do you have the check-off system with the Packers and Drivers at your plants?

MR. WILLARD: I am going to object to that. That is not relevant to any issue in this case, election, complaint, or anything else. He is just fishing for information.

TRIAL EXAMINER: What is the relevancy?

MR. WHIPPLE: It is relevant in the 8(a)(2) charge.

MR. WILLARD: You are not trying that.

MR. WHIPPLE: We are contending domination is here. Further, the Board has reimbursements in situations where a checkoff existed in a situation of this nature.

TRIAL EXAMINER: The complaint does not allege domination.

MR. WHIPPLE: We are going to be contending, and we believe the evidence will show domination, and we will be requesting disestablishment and reimbursement order.

TRIAL EXAMINER: Do you have any authority to the proposition you can expand the scope of the General Counsel's complaint?

39 MR. WHIPPLE: I believe certainly from the standpoint, we can certainly show it in connection with the over-all picture.

\*

\*

\*

\*

\*

MR. WHIPPLE: At this time, I assume you are sustaining the objection?

TRIAL EXAMINER: I am sustaining the objection.

MR. WHIPPLE: I would like to offer to prove by this witness that at all of his plants, that is, the plants of Guy's Foods, Inc., a check-off system exists up to the present time in which from the wages of the employees, dues, that is, the Packers and Drivers Union dues — it is the



Association of Packers and Drivers Union dues — are deducted from the wages of all his employees within the bargaining unit, and that these deductions, this check-off system — it is known as check-off — anyway, the dues that are deducted from the wages of the employees are remitted to the Association of Packers and Drivers Union.

We can prove that this is being done up to the present time, and has been done in the past, and has been done since the, continuously since the  
40 expiration of a contract with the Association of Packers and Drivers which expired, I think, February 14, 1965.

TRIAL EXAMINER: Now, you were talking a moment ago about theory. Is it the General Counsel's position that the deduction of dues or check-offs since February 14, 1965, constitutes unlawful assistance?

MR. BRUCKNER: The General Counsel at this time has no position. We have alleged nothing in the complaint.

TRIAL EXAMINER: You are not taking any position whether the deduction of dues would be assistance or not, not from the standpoint of domination? You have alleged assistance in the complaint.

MR. BRUCKNER: I would take the position that it could possibly be assistance, but I again emphasize that we can present no evidence.

TRIAL EXAMINER: You are not taking that position in this case?

MR. BRUCKNER: I am not taking that position in this case.

\* \* \* \* \*

42

### BABE RUTH CAMERON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

TRIAL EXAMINER: What is your name?

THE WITNESS: Babe Ruth Cameron.

BY MR. WACKNOV:

Q. Where do you work? A. I work at Sears, Roebuck now. I used to work at Guy's.

Q. You used to work at Guy's Foods? A. Yes.

Q. Tell us approximately how long did you work there? A. Over a year.

Q. Directing your attention to March 5, 1965, that is the day of the union meeting, about what time did you get to work that day? A. About 1:30.

Q. About 1:30? A. Right.

Q. In the afternoon? A. Yes.

Q. Now, what happened when you got to work? A. Well, Newman Caldwell —

43 Q. (Interrupting) Who is Newman Caldwell? A. Right back here.

Q. And do you know what his position is with the company? A. Well, the boss mainly.

Q. You said when you got there Newman Caldwell told you to go across the street? A. Told me to punch in and go across the street to the meeting.

Q. Did Newman Caldwell say you could go across the street if you wanted to? A. No, he just told me to go across.

\* \* \* \* \*

Q. (By Mr. Wacknov) Directing your attention to March [12], 1965, did you happen to have a conversation with any company supervisor? A. Yes, I did.

Q. Who was that supervisor? A. Yes, he was a supervisor.

TRIAL EXAMINER: Who was it?

THE WITNESS: Sitting over here (indicating).

TRIAL EXAMINER: What is his name?

THE WITNESS: Clark Bacon.

44 Q. (By Mr. Wacknov) To the best of your memory, what did you say and what did Mr. Bacon say during this conversation? A. He came in there and he said, "It isn't any of my business who —

Q. (Interrupting) Could you go a little slower? When you had a conversation with Mr. Bacon — now, very slowly so he can get it down — what did you say and what did he say? First of all, who began the

conversation? A. He sort of came in there and I was mopping. He said, "Who are you voting for?"

TRIAL EXAMINER: He asked you who you voted for?

THE WITNESS: Yes. [I] said it wasn't any of his business. I told him I thought that was private, and he said, "Well, if you voted for A.B.C., you might not get any overtime", so I told him I wasn't working any overtime anyway.

\*

\*

\*

\*

\*

46

## JERRY HALEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

TRIAL EXAMINER: What is your name?

THE WITNESS: Jerry Haley.

BY MR. WACKNOV:

Q. Mr. Haley, are you presently employed by Guy's Foods?

A. Yes, I am.

Q. And how long have you been employed by the company? A. Two years.

Q. Now, directing your attention to March 5, 1965, the day of the union meeting, did you have a conversation with any company supervisor on that day? A. I did.

Q. You say that you did not? A. I got to work at 1:30 and they said they were having a union meeting.

Q. You got to work at 1:30. What happened then? A. He told me to go across the street.

47 Q. Who told you? A. Newman Caldwell. He said they were having a union meeting across the street.

TRIAL EXAMINER: He said they were having a union meeting and for you to go across the street, is that what he said to you? You were having a union meeting and you go across the street?



THE WITNESS: He said, "You can go across the street. They are having a union meeting."

\* \* \* \*

Q. (By Mr. Wacknov) Would you repeat what Mr. Newman Caldwell said to you when he saw you?

\* \* \* \*

THE WITNESS: He said, "Jerry —

TRIAL EXAMINER (interrupting): "Jerry, they are having a union meeting. You can punch in and go across the street." Those are his exact words the best you can recall?

THE WITNESS: Yes.

48 Q. (By Mr. Wacknov) Did you reply anything to him? A. No.

Q. What did you do? A. I punched in and went across the street.

Q. Mr. Haley, about how long did you stay in the meeting? A. I don't know exactly know, half an hour, hour, something like that.

Q. This is after you punched in? A. Yes.

Q. Were you paid for the time you attended the meeting? A. Yes.

\* \* \* \*

#### DIRECT EXAMINATION

BY MR. WHIPPLE:

Q. What time was it you punched in? A. 1:30.

Q. And exactly what meeting was it you went to? A. We were supposed to be voting on the contract, they said.

Q. Was it a union meeting of the Association of Packers and Drivers?  
A. Yes.

Q. And where was this held? A. Across the street.

49 Q. Across the street in what? A. The warehouse.

TRIAL EXAMINER: It was part of the company's property?

THE WITNESS: Yes.

\* \* \* \*

50

MARY ETTA JONES

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WACKNOV:

Q. Would you state your name and address? A. Mary Etta Jones, 3800 Montgall.

Q. Do you presently work for Guy's Foods? A. Yes.

Q. And for how long have you worked for the company? A. Eight years.

Q. Now, what are your duties with the company? A. I work in the chip department.

Q. Directing your attention to March 5, 1965, that is the day of the union meeting, could you tell how you were notified that the meeting was going to be held? A. Well, at 1 o'clock they told me to turn the machine off.

Q. Who told you to do this? A. Newman Caldwell.

Q. What did you do? A. I turned the machine off and went across the street.

Q. You went across the street? A. Yes.

51 TRIAL EXAMINER: How did you know to go across the street?

THE WITNESS We already had heard about a meeting.

TRIAL EXAMINER: Who told you?

THE WITNESS. They all were saying, a bunch of the girls —

TRIAL EXAMINER: (interrupting): Talk around the plant?

THE WITNESS: Yes.

Q. (By Mr. Wacknov) When you went to the meeting across the street, did you happen to notice if anyone was holding the door for the employees? A. Yes, Guy Caldwell was holding the door.

Q. Mr. Guy Caldwell? A. Yes.

Q. What time do you normally leave work? A. 1:30.

Q. And did you receive pay for attending this meeting? A. Yes, I did.

\*

\*

\*

\*

\*

## DIRECT EXAMINATION

BY MR. WHIPPLE:

\* \* \* \* \*

52 Q. Was this overtime you were paid during the time you attended the meeting? A. No, I was paid my full time.

Q. But you left to go to the union meeting before you normally get off work? A. I left at 1 o'clock and I get off at 1:30.

\* \* \* \* \*

53

## AFTERNOON SESSION

1:30 p.m.

TRIAL EXAMINER NACHMAN: On the record.

Before the recess, I took under advisement the question of whether the counsel for the Charging Party could question the witness regarding check-off on the grounds of alleged domination or assistance. I adhere to my ruling that the evidence will not be received for the purpose of establishing domination, that is outside the scope of the General Counsel's complaint. I will, however, permit you to put on that testimony for the purpose of establishing assistance. I think you are entitled to establish the same violation alleged in the complaint on a different theory, so if you want to examine the witness in that area, you may do so.

MR. WHIPPLE: Yes.

TRIAL EXAMINER: Call Mr. Caldwell back to the stand, please.

Whereupon,

GUY CALDWELL

was recalled as a witness by and on behalf of the Charging Party, having been previously sworn, was examined and testified further as follows:

## DIRECT EXAMINATION

\* \* \* \* \*

54 Q. (By Mr. Whipple) Mr. Caldwell, do you at the present time have what is known as a check-off system at your plants, that is, the

plants of your company, in which the dues of employees are checked off out of their wages and remitted to the Association of Packers and Drivers Union? A. Yes.

TRIAL EXAMINER: When did that start?

THE WITNESS: 1956.

TRIAL EXAMINER: It has been going on continuously since then?

THE WITNESS: Yes.

TRIAL EXAMINER: It was not suspended when the contract expired in February?

THE WITNESS: No, sir.

MR. WILLARD: I am going to object to the question since you have concluded the contract expired in February.

TRIAL EXAMINER: That is valid.

You did not cease in February of 1965?

THE WITNESS: It did not, sir.

TRIAL EXAMINER: And continues as of this time?

THE WITNESS: Yes, sir.

Q. (By Mr. Whipple) In all of the plants of Guy's Food, Inc., is that correct? A. It covers all employees that belong to the union. We have two payoffs to Kansas City and Wichita.

55 TRIAL EXAMINER: Does it cover just the employees that belong to the union or all the employees at the Kansas City or Wichita plant, whether they do or do not belong to the union?

THE WITNESS: As I understand it, it only covers people belonging to the union.

TRIAL EXAMINER: That is all you check off the dues for?

THE WITNESS: Yes, sir. If an employee comes who is not eligible to belong to the union, we don't check off their pay unless he is eligible.

Q. (By Mr. Whipple) At your Kansas City plant, do all of your employees in the bargaining unit belong to the union? A. I am not sure

about this. I would say most of them.

Q. Do any of the employees in the Kansas City plant after — that is, I am talking about the employees in the bargaining unit — after 30 days of employment, do they all belong to the union? A. As far as I know, yes.

Q. What? A. As far as I know, yes.

Q. How about at the Wichita plant? A. It would be the same.

MR. WHIPPLE: That is all I have.

TRIAL EXAMINER: You are doing this pursuant to a contract, is that correct?

THE WITNESS: Yes, sir.

\* \* \* \* \*

70

# LUCILLE BERNARDI

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

Q. State your name and address for the record. A. Lucille Bernardi, 5616 Charlotte.

Q. Where are you employed? A. Guy's Foods.

Q. How long have you been employed there? A. Almost six years.

Q. What is your job classification with Guy's? A. Supposedly a machine operator.

Q. Are you a member of a union? A. Yes.

Q. What union? A. Packers and Drivers.

Q. Have you ever held an office in that union? A. Yes, I have.

Q. What office did you hold? A. President.

Q. President of a specific local? A. Yes.

71 Q. What local was that? A. Local No. 3.

Q. Where is that? A. Kansas City, Missouri.



Q. Does this cover the Kansas City plant? A. Yes.

Q. For how long were you president? A. I think about four months; from January 1 to May 22.

TRIAL EXAMINER: Of 1965?

THE WITNESS: Yes.

Q. (By Mr. Bruckner) Now, are you acquainted with Guy Caldwell?  
A. Yes, I am.

Q. Are you acquainted with Francis Caldwell? A. Yes, I am.

Q. Are you acquainted with Newman Caldwell? A. Yes.

Q. While employed at Guy's Foods, were you aware of efforts by employees to join another union? A. Yes.

Q. What union was that? A. A. B. C.

Q. Could you state whether you ever received any communications from the American Bakery and Confectionery Workers Union? A. Yes.

72 Q. What did you receive? A. A telegram.

MR. BRUCKNER: May I have this telegram marked for identification as General Counsel's Exhibit No. 7.

(The document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

TRIAL EXAMINER: What is the date of that?

MR. BRUCKNER: March 4, 1965.

Q. (By Mr. Bruckner) Miss Bernardi, I hand you what has been marked as General Counsel's Exhibit 7 for identification, purporting to be a telegram addressed to Mrs. Lucille Bernardi from Harold Richter, International representative of the American Bakery and Confectionery Workers Union. I ask you to state whether or not this is a telegram you received. A. Yes, it is.

Q. Would you please speak up. A. Yes.

MR. BRUCKNER: At this time counsel for General Counsel offers into evidence General Counsel's Exhibit No. 7.

MR. WILLARD: I object to it as not showing any relevancy to any

issue in this case.

MR. BRUCKNER: With regard to Respondent's objection, I think it indicates that the American Bakery and Confectionery Workers were denied the use of the employees' bulletin board. And if the Trial Examiner will bear with me, I think I can show the relevancy of this telegram.

TRIAL EXAMINER: I will receive this solely for the purpose of showing this is a document the witness received.

MR. WILLARD: No objection on that basis.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

Q. (By Mr. Bruckner) Mrs. Bernardi, did you ever have a conversation with any company official about this telegram? A. Yes.

Q. What company official did you talk to? A. Mr. Guy Caldwell.

Q. And when did this conversation take place? A. March 5.

Q. About what time of day was it? A. About 7:15 a.m.

Q. And who else was present when you talked to Mr. Caldwell?

A. There were a lot of people around, but I can't name them.

Q. This conversation took place in the plant? A. Yes, on the dock.

Q. How did you happen to be there at that time? A. I went to work.

TRIAL EXAMINER: You work out on the dock?

THE WITNESS: I was going to the coffee shop. I went to work and I was going to the coffee shop. You would call it more or less the garage.

Q. (By Mr. Bruckner) Would you please tell the Trial Examiner what was said by you and what was said by Guy Caldwell at this time? A. I asked Mr. Caldwell if I could put the telegram on the bulletin board.

Q. What bulletin board is this? A. The employees' bulletin board in the coffee shop. And he said yes. And I walked on in the coffee shop to get a cup of coffee and Mr. Caldwell came in and asked me if he could

see the telegram. I took it out of my purse and I gave it to him. He said I could not put it on the bulletin board because it wasn't true. And I told him, well, the reason I wanted to put it on the bulletin board I had various phone calls up until 11:30 that night concerning that telegram, telling me it was union material and they should read it and know about it. And Mr. Guy told me that I could not put it on the bulletin board, and I told him, well, the next time I got anything I wouldn't let Maggie Sandifer see it because she was the only one I let read it on March 4.

Q. What did Mr. Guy Caldwell say to this? A. He said if I got anything concerning the people's job, that I should let him or Maggie Sandifer know about it.

Q. As president of the local — A. (Interrupting) I told him I wouldn't do it. He gave his address to me.

75 Q. As president of the local Packers and Drivers Association, would you state whether you have posted Association material on this bulletin board? A. Yes; just meeting notices.

Q. Now, while employed at Guy's during this period, were you aware of efforts of the Packers and Drivers to get employees to vote on its proposed contract with Guys? A. Yes.

Q. Did you ever have a conversation with any company official about such a vote? A. Yes.

Q. And when did this conversation take place? A. March 5.

Q. And where did the conversation take place? A. In Mr. Guy's office.

Q. And about what time of day was it? A. I would say about 11:15.

Q. Now, how did you happen to be in Mr. Caldwell's office? A. Mrs. Soloman told me about 11 o'clock that Mr. Guy wanted to see me.

Q. Who is Elizabeth Soloman? A. She is my floor lady.

Q. Was there anyone else besides you and Mr. Caldwell there at  
76 this time? A. Yes.

Q. Who was present? A. Newman Caldwell, Francis Caldwell, Maggie Sandifer, Irma Adams, Lavelle Smith, Bob Murphy, and Laura

Michaels, and myself and Charley Thompson.

Q. Now, for the record, these other people you have named outside of the Caldwells are employees of the company? A. Yes, sir.

Q. Would you relate what was said at this meeting in Guy Caldwell's office? A. Mr. Guy told me he wanted to get the contract over with. I told him I couldn't do anything about that contract. I said, "We will call Mr. Barker." And he told his office girl to call Mr. Barker, and Bob Murphy kind of shook his head. Francis says, "Bob Murphy, you can just look for another job," she says, "you are not going to make any \$3 an hour here. She says — Mr. Guy said, "You blew your mouth off at two union meetings."

Q. Who was he referring to? A. Bob Murphy.

Francis said, "Let's get this over with and think about getting money and profit sharing. You people that aren't happy that don't do anything but cause trouble, why don't you quit."

77 TRIAL EXAMINER: Who is Francis?

THE WITNESS: Mr. Caldwell's wife.

A. (Continuing) She said, "There are plenty of jobs." She looked right at me and she said, "Get your husband to get you a job." I told her I was happy. Mr. Guy said, "Don't sit there and lie to me." He said, "If you are so damned innocent, why were you at that hearing." I told him I had been threatened and subpoenaed.

Q. (By Mr. Bruckner) What hearing was this? A. The Labor Board hearing in January.

Q. After you told him this —

TRIAL EXAMINER (interrupting): Could we stipulate what hearing that was.

MR. BRUCKNER: It was a hearing —

TRIAL EXAMINER (interrupting): Can you stipulate?

MR. WILLARD: I am not admitting the conversation took place at all. I will stipulate that there was a hearing held on January 15, 1965, in Case RC-4658, 4661, and 4662, and Mrs. Bernardi was a witness at that hearing.

TRIAL EXAMINER: All right.

MR. BRUCKNER: So stipulated.

Q. (By Mr. Bruckner) What was said after you told him you were threatened with a subpoenae? A. Francis Caldwell said for the qualification and education we people were making plenty of money. And Mary came back in —

78 Q. (Interrupting) Who is Mary? A. Mr. Guy's office girl. She said Mr. Barker was on the phone, and Mr. Guy got up and talked to Mr. Barker. He went in the other room. He came back and told me Mr. Barker wanted to talk to me. I went in there —

Q. (Interrupting) What happened after you talked to Mr. Barker? Did you go back to the meeting?

MR. BROWNE: May she permitted to finish her answer.

TRIAL EXAMINER: Do you want the testimony?

MR. BROWNE: Yes.

THE WITNESS: Mr. Barker told me there was a bar to the contract. It was perfectly legal to have that meeting that afternoon at the plant. And I told him that the people weren't notified, that they didn't know anything about a meeting there. And he said, "Let me talk to Loral Michaels," and I went back in the office where they were all at and I sent Loral Michaels to the phone. When Michaels went out, Maggie Sandifer had two pieces of notebook paper taped together and she told me I was outnumbered and the people were union and they wanted that meeting that afternoon. So I said, "All right, I am outnumbered." About that time Loral Michaels came back through the door and I went out behind Michaels and I told Michaels he was an International man and he should know whether it was legal or not.

Q. (By Mr. Bruckner) International man for what? A. The Pack-  
79 ers and Drivers.

Michaels says, "It isn't right for us to push a meeting on it." And I said, "If it isn't right, let's do something about it."



MR. WILLARD: I am going to object to the hearsay portion of this testimony.

MR. BRUCKNER: I think the Association of Packers and Drivers are a party of interest.

TRIAL EXAMINER: It may stand.

Q. (By Mr. Bruckner) After your conversation with [Mr.] Michaels, was there a meeting of employees held that day? A. Yes.

Q. Where was the meeting held? A. Across the street at Guy's — it wasn't his office, in a hall like.

Q. It was on property owned by Guy's across the street from the main plant? A. Right.

Q. Did you attend that meeting? A. Part of it.

Q. Would you describe what you observed at the meeting? A. Well, there were people sitting on the floor, on the boxes, talking back and forth with one another, throwing paper; it was a big mess.

80 Q. Now, about how long were you at the meeting before you left?  
A. Not very long. I tried on three different occasions —

Q. (Interrupting) You did leave the meeting? A. Yes.

Q. Did you have a conversation with any company official after you left the meeting? A. After I left the meeting I went back over to the nut department and went to work.

Q. Who did you talk to on this occasion? A. Mr. Guy came back there and he said, 'If you people are going to vote, get on there and vote, because this is the last time. This is it.'

Q. What did you do after that? A. I went back over there.

Q. Were you paid by Guy's Foods, Incorporated, for your attendance at this meeting? A. Yes.

Q. Had you ever been paid by the company for attendance at a union meeting before? A. No, because there were none ever held during working hours before since I have been there.

Q. Now, did you vote in the National Labor Relations Board election of Guy's employees on May 5? A. Yes, I did.

Q. Did you participate in any other way in the election? A. Yes.

81 Q. And what did you do, if anything? A. I was an observer for  
A.B.C.

\* \* \* \* \*

84 Q. (By Mr. Bruckner) What was your salary on February 15, at  
Guy's Foods, your hourly salary? A. A dollar seventy.

85 Q. What is your present salary? A. A dollar seventy-five.

Q. Can you state when you received this wage increase?  
A. Pardon?

Q. Can you state when you received a wage increase, an increase  
in salary? A. July 9, 1965.

Q. Are you paid in cash or by check? A. Check.

TRIAL EXAMINER: Did you know this wage increase was coming?

THE WITNESS: Well, we had been hearing it around the plant.

TRIAL EXAMINER: Did anybody ever tell you it was coming?

THE WITNESS: Yes.

Q. (By Mr. Bruckner) Who had told you personally? A. We were  
at the bargaining table for Mr. Guy to give us the nickel raise.

Q. When were you at the bargaining table? A. March 1.

MR. BRUCKNER: May I have this marked for identification as Gen-  
eral Counsel's Exhibit 8.

(The document above referred to was  
marked General Counsel's Exhibit  
No. 8 for identification.)

86 MR. BRUCKNER: It is a check stub from Guy's Foods, Inc., having  
the date on it of July 3.

Q. (By Mr. Bruckner) Handing you what has been marked as Gen-  
eral Counsel's Exhibit 8, a check stub with the date of July 3 on it, and  
ask you whether or not this was a stub you received with your pay check  
on July 9. A. Yes.

Q. Would you state whether you received anything else with a check  
stub on that date? A. Yes.

Q. What else did you receive. A. My back pay and there was a little pamphlet in there telling that that other check was my back pay.

\* \* \* \* \*

87 MR. WILLARD: We would stipulate that on or about July 9, in Kansas City and those plants served by Kansas City and on or about July 16, 1965, for employees covered in the Wichita operations the company increased rates of pay for all employees pursuant to an agreement executed February 14, 1965, and a part of this record as Respondent's Exhibit No. 4 and a subsequent clarification agreement not yet in the record dated March 1, 1965, and made all increases retroactive to February 15, 1965, pursuant to the terms of the February 14, and March 1 agreements.

TRIAL EXAMINER: The increase that day was five cents an hour.

MR. WILLARD: It depended entirely who was involved, where they worked and the time of employment.

TRIAL EXAMINER: The range was from five cents?

MR. WILLARD: From five cents to fifteen cents. And the driver salesmen had an entirely different increase arrangement reflected in their base salary.

TRIAL EXAMINER: That was also put into effect?

MR. WILLARD: Yes.

88 TRIAL EXAMINER: All retroactive to February 15.

Is that satisfactory?

MR. BRUCKNER: I will not stipulate this was the only reason Respondent put this wage increase in.

TRIAL EXAMINER: He hasn't stated this was the only reason.

MR. WHIPPLE: We don't agree that that agreement is valid at all.

TRIAL EXAMINER: Will you stipulate that it was done?

MR. WILLARD: I will stipulate it was done and that the increases are as reflected as set forth in those two agreements. That is obvious, unless you want to check all through the books.

MR. WHIPPLE: It was done — and it is reflected in this alleged contract dated February 14, 1965.

MR. WILLARD: If you gentlemen don't like my stipulation, why don't you try it.

MR. BRUCKNER: I will accept the stipulation.

TRIAL EXAMINER: That it was done?

MR. BRUCKNER: It was done and that the wage increase —

MR. WILLARD (interrupting): The increases are as provided by the terms of that agreement. It doesn't get us into the terms of why we did it.

MR. BRUCKNER: That is satisfactory to me.

MR. WHIPPLE: I would like to stipulate that it was done.

89 TRIAL EXAMINER: Counsel is not willing to limit the stipulation. No stipulation has been received.

MR. WHIPPLE: I will stipulate to the final modified stipulation.

TRIAL EXAMINER: You will accept the stipulation?

MR. WHIPPLE: Yes.

TRIAL EXAMINER: It will be approved.

\* \* \* \* \*

Q. (By Mr. Bruckner) How long did you act as an observer on the day of the election? A. Eight hours, all day.

Q. Were you paid by the company for your time spent as an observer for this election? A. I don't think I was. No, I don't think I was.

MR. BRUCKNER: I have nothing further.

#### DIRECT EXAMINATION

BY MR. WHIPPLE:

\* \* \* \* \*

95 MR. BROWNE: You asked her the location of the voting booth.

Q. (By Mr. Whipple) Tell us where the voting booth was located.

A. About middle ways of the plant and six inches [from] the time clock.

Q. Six inches from the time clock? A. Where the chip department time in and out. It was right by the time clock. There was a door

that went to the coffee shop. Supervisors at various times were in and out and also other workers in the plant.

Q. Now, do you remember the hours the election was held?

A. Well, some of them I do.

Q. Approximately. A. I think it was from 5 to 9:30.

Q. In the morning? A. Yes, a.m., and then from 12 to 2:30.

Q. Is that p.m.? A. Yes, p.m. And then we went back at 4:45 for 15 minutes. I think that is the best I can recall.

96 Q. Was that on May 5, 1965, at the Kansas City plant you are speaking of? A. Yes.

Q. When is the shift change in the afternoon? A. I think in the chip department they come in at two or three different times, but I think at 1:30.

Q. The election was going on at that time? A. That is right.

Q. These people would come to the time clock, is that right?

A. Yes.

Q. As I understand it, you said the voting booth was within how many inches of the time clock? A. Six inches.

Q. What was on the other side of the time clock? A. The door of the coffee shop.

Q. Who went in and out of the coffee shop? A. Several of the supervisors.

Q. Can you name them specifically? A. Irene Joslyn, Elizabeth [Soloman], Violet, I don't know her last name, she is a forelady in the chip department, and Mrs. Francis Caldwell came by there one time and went upstairs.

Q. She came by where? A. Right by where we were — by the voting booth.

Q. By the voting booth? A. Yes; I would say within five feet.

97 Q. That she came by? A. Yes, and went upstairs.

Q. How many times did she come by? A. I only saw her one time.



Q. This was during the time the election was taking place? A. Yes.

Q. Was the observer's table located close to the booth? A. A little bit out from the booth and Newman and Clark were pulling carts out in the open.

Q. Newman Caldwell and — A. (Interrupting) They were putting carts out where they were loading the trucks. They were out in the open.

Q. How far was this from the voting booth? A. I would say about ten feet.

Q. How long a period of time did Newman Caldwell and Clark Bacon do this during the period of time the election went on? A. You know, just pull the cart by.

Q. Did they do this several times? A. Yes.

\* \* \* \* \*

98 Q. (By Mr. Whipple) Were there any other supervisors you saw that were in the vicinity of the voting booth on that day? A. I saw Mr. Guy there at the beginning, at 5 o'clock that morning. The government man told him he would have to leave, and he did.

Q. Now, then, in regard to the booth itself, do you know who constructed this booth and who located it here? A. I saw Paul Kennedy working on it.

Q. Who is Paul Kennedy? A. An employee down at Guy's.

Q. When was that? A. That was on May 4.

Q. The day before the election? A. Yes.

Q. What about the — as far as the general work area there where this booth was located, can you describe a little more in detail what took place there as far as the different types of work, if there were any ramps or walkways up above the main floor level? A. Well, there is a walkway up where they work.

Q. Up above the floor level? A. Up above the floor level, above the voting booths. These voting booths were open at the top and they put cardboard over the grates and it left about two and a half foot open on the side, but they had curtains down the front of the booth.

99 Q. You said there were pieces of cardboard laying on what? A. On the grates. They have some kind of iron or steel grates.

Q. Is it a walkway? A. Yes.

Q. Can you state whether or not this walkway was directly above the voting booth? A. Well, it was up above.

Q. Then you said the cardboard was placed on this walkway above — A. (Interrupting) On those grates.

Q. Was there any distance between the grate, that is, where the cardboard was located, was there any distance there between the cardboard and the top of the voting booth? A. I would say about two feet or two and a half, something like that.

Q. Was there an open area there? A. Yes, way up at the top.

\* \* \* \* \*

101 Q. When these various supervisors were in the area there that you have testified to close to or in the vicinity of the voting booth, were there people voting during this period of time? A. Yes.

Q. Were there people working up on the grate or walkway that you have described? A. Yes; they were loading something or other up there.

Q. Did you see any supervisors working up there? A. No.

Q. There were employees working up there? A. Yes.

TRIAL EXAMINER: Did you vote that day?

THE WITNESS: Yes, I did.

TRIAL EXAMINER: When you were in the voting booth, did you notice whether anybody on this walk could see down in the voting booth?

THE WITNESS: I don't think they could unless they were off on the side, you know.

MR. WHIPPLE: That is all I have.

\* \* \* \* \*

102

## CROSS-EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

103 Q. This telegram that you received from Mr. Richter, how was that addressed? Was that to you in your official capacity? A. I think it was addressed to the president.

Q. The president of the Association of Packers and Drivers?  
A. Yes, sir.

Q. That was you? A. Yes, sir.

Q. Did you tell any of the other employees about this telegram you received? A. Yes, I did.

Q. Did you tell Maggie Sandifer about that? A. Yes.

Q. Who did you tell her sent you that telegram? A. I let Sandifer read that telegram.

Q. You let her read the entire telegram? A. Yes, I did.

104 Q. You didn't tell her who it was from; you let her read it? A. I did.

Q. There was testimony about a meeting held the afternoon of March 5. Did you start to preside at this meeting? Were you there?  
A. Yes.

Q. Did you call the meeting to order? A. I tried to but I didn't get them quiet.

Q. Did you say anything about the telegram? A. Yes. I tried three different occasions to tell them that I had received a telegram saying that the meeting was illegal and I would be subject to be charged with a labor charge.

Q. Did you tell them who it was from at that meeting? A. No.

Q. Isn't it a fact you announced in the meeting you had a telegram from the National Labor Relations Board? A. No, I did not. I told them that I had a telegram saying that the meeting was illegal and if it was held that we would be subject to a labor law, breaking a labor law.

Q. Did you tell any employee that you had received this telegram

from the National Labor Relations Board or from the government?

A. No, I did not.

\* \* \* \* \*

108 Q. (By Mr. Willard) Let's go back to your meeting on March 5. I believe it was in the office of Guy Caldwell. Is the first you knew about that meeting was when Elizabeth Soloman asked you to attend?

A. That is right.

Q. Had you been asked to call a meeting by any of the employees? A. No.

Q. You heard nothing about the desire of the employees for a meeting? A. Not for a meeting, no, I hadn't.

\* \* \* \* \*

110 Q. You were asked to attend the meeting? A. Yes, I was.

Q. And you did attend? A. Yes.

Q. Who all was there? A. Newman Caldwell, Guy Caldwell, Francis Caldwell, Charley Thompson, Irma Adams, Maggie Sandifer, Lois Behymer, Laura Michaels and Bob Murphy.

Q. When were you told what the subject of the meeting was? A. Right after the meeting come in there.

Q. You went in about the same time? A. No. I went in and Mr. Guy Caldwell called the committee in.

Q. While you were sitting there he called them in? A. He just began to talk.

Q. You are acquainted with Guy Caldwell's office; there is a reception area and his office and the glass panel in-between, is that correct? A. I don't know about a glass panel; there could be. That is the only time I have been in Guy Caldwell's office.

Q. And when you came in, was anyone waiting out front of his office where the secretary sits? A. The secretary was in the first office and we went in the one next to it.

111 Q. Who went in with you? A. Well, I went in and then all the other committee came in.

Q. Who first mentioned the contract; was it Maggie Sandifer?

A. Mr. Guy.

Q. Mr. Guy was the first one that said anything about the contract? A. He said he wanted to get the contract over.

\* \* \* \* \*

114 Q. Going back to this meeting in Guy's office, I am not sure I heard you right. Guy said something about a damn meeting. What was your testimony on that? A. He said if I was so damn innocent, why was I at that hearing.

Q. Do you know Guy Caldwell very well? A. Yes, I do.

115 Q. And your testimony is he said, "If you are so damned innocent"? A. Yes.

Q. In your statement, "Guy said, 'If you are so innocent, why did you appear at the hearing?'" Which of those two versions is the correct version? A. Mr. Guy said, "If you are so damned innocent, why did you appear at that hearing?"

\* \* \* \* \*

116 Q. You say that Guy Caldwell called Frank Barker from that meeting? A. I said that he left the little office and went over there and I presume he told his secretary to call him, and she returned and said Mr. Barker has returned the call, and Mr. Caldwell talked to him.

Q. Talked to him in the office? A. It was not in the office we were in; it was an adjoining office.

Q. Was the door open? A. Yes.

Q. Did you hear the conversation? A. No, I didn't.

Q. How long were you in this meeting in Guy Caldwell's office? A. I'd say about 40 minutes, 45.

Q. After you left the meeting you called the A.B.C. Union? A. No, I didn't. I called the Labor Board, [Loral] Michaels and I.

Q. The two of you did? A. [He] looked up the number and I did the calling.

Q. And did you receive any advice from the Labor Board? A. Yes. He told me to call the union attorney.



Q. Did you? A. No, because I just got through talking to him. He told me the meeting was legal.

117 Q. When the meeting was held that afternoon, you walked out of the meeting? A. Yes.

Q. What did you say at the time you left the meeting? A. I said, "As far as I was concerned, there wasn't going to be a meeting."

Q. And you were the president of the local? A. Yes, because I didn't know whether it was right or didn't know whether it was wrong.

Q. You felt you were acting in the best interest of the local? A. I didn't know whether to have it or not to. Mr. Barker told me it was legal and the telegram said I would be breaking a labor charge.

Q. So you followed the advice of the A.B.C.? A. I tried to tell the people about the telegram, but they wouldn't be quiet and they were throwing papers and sitting on boxes and standing up. They were like a big bunch of kids.

Q. So you went back to work? A. I went back over to the nut department and turned over my machine and went back to work.

Q. And several other people went with you? A. Yes.

Q. Did you know Irma Adams took over the meeting after you left? A. Irma Adams told me Mr. Barker told her to go ahead without me.

118 Q. Were you notified that the meeting was, in fact, going to be held after you walked out? A. Mr. Guy said if we were going to vote, to go over there because this is the last time, this is it. So we went back over there.

Q. Did he tell you you had to go? A. No; he said, "If you people are going to vote, get over there, this is the last time. This is it."

MR. WILLARD: No further questions.

#### CROSS-EXAMINATION

BY MR. BARKER:

Q. You know me as the attorney for the Packers and Drivers?

A. Yes.

Q. On March 1, you as president of the Kansas City local attended a bargaining session of the company at which meeting were all or most all of the local presidents from Omaha, Kansas City and Wichita, were they not? A. Yes.

Q. That meeting lasted — A. (Interrupting) I don't know they were presidents.

Q. There were 10 or 12 of the Packers and Drivers there? A. I don't know how many were there. I could count them up.

Q. You were present at that meeting? A. Yes, I was.

119 Q. There was no doubt in your mind as to what meeting I am talking about? A. Yes, I know; March 1.

Q. At the conclusion of that meeting there was an agreement reached between the presidents of the various locals of the Packers and Drivers that each of you would call a special meeting of your individual locals as soon as possible and would urge the adoption of the ratification of the contract, is that not correct? A. I don't recall anything like that.

Q. Do you deny that such an agreement was made? A. No, I don't deny it. I said I didn't recall it.

Q. That was on March 1, that meeting. Now, did not you and I have a telephone conversation on or about March 3, of 1965, in relation to the calling of a special meeting? This would have been the day prior to the receipt of the telegram of March 4? A. I remember our telephone conversation after that meeting at the plant.

Q. Do you recall the telephone conversation prior to the — I better go forward a little. On March 4, you and I had a telephone conversation that evening about this particular telegram. Do you recall that? A. Yes, I remember you calling.

Q. Do you recall the telephone conversation on the day before with  
120 relationship to a calling of a special meeting? A. No, the first I can recall talking to you was about the telegram.

Q. You don't recall a conversation in which you and I discussed the days under the constitution we had to publish a notice of the meeting?

A. No.

Q. And during that conversation I told you it had to be at least 24 hours in advance? A. I don't remember you ever telling me that.

Q. With reference to our conversation on March 4, and the telegram, you refused at that time to tell me who the telegram was from, did you not? A. Yes.

Q. I believe my recollection is correct when I tell you that you read me the contents of the telegram? A. I could have, because I read it to several people.

Q. Then going forward a little further, you received a telegram from Mr. Dummit, the president of the National organization, which told you because of the lack of proper notice the meeting was declared null and void by the National Union and directed another meeting? A. Yes; not a meeting, but you said you were going to annul the meeting but we would vote by mail.

Q. But the sum and substance of the telegram was despite the fact the majority of the employees had ratified the contract on March 5, that 121 vote was about 60 to 59 or 57? A. I thought it was 57 to 60, I think.

Q. In favor of the contract? A. In favor of the contract.

Q. Despite the outcome of the vote, you received this telegram we are speaking of, saying that meeting was null and void and any action taken at that meeting was null and void because of lack of proper notice? A. Yes, I got a telegram from Bob.

Q. Subsequent to that, a mail ballot was taken? A. He said we would have a mail ballot.

Q. A mail ballot was taken and you were present at that meeting which all the ballots were opened? A. Yes.

Q. At that time the contract was approved by a rather substantial majority. Do you recall the numbers? A. I believe it was thirty something to eighty something.

Q. Eighty-eight to thirty-three, I think, in favor of the contract? A. Yes.

\*

\*

\*

\*

\*

123

ROBERT MURPHY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

Q. Are you employed? A. Yes, I am.

Q. Where? A. Guy's Foods, Inc.

Q. How long have you been employed there? A. About fourteen years.

Q. And what is your job, sir? A. Cook.

Q. Are you a member of a union? A. Yes, I am.

Q. What union? A. Packers and Drivers Union, Local No. 3.

Q. Do you hold an office in that union? A. Yes, I do.

Q. What office? A. Steward.

124 Q. Shop steward? A. Shop steward.

Q. Are you acquainted with Mr. Guy Caldwell? A. Yes.

Q. Mrs. Francis Caldwell? A. Yes, I am.

Q. Mr. Newman Caldwell? A. Yes, I am.

Q. Directing your attention to March 5, 1965, can you state whether or not you attended a meeting at Guy Caldwell's office that day? A. Yes, I did.

Q. How did you happen to be at that meeting? A. Mr. Newman Caldwell said his brother wanted to see me over at his office across the street. Mr. Caldwell wanted to see me across the street.

Q. Could you tell us who was present at that meeting? A. Myself, Maggie Sandifer, Irma Adams, Charlie Thompson, Mrs. Bernardi, [Loral] Michaels, Newman Caldwell, and Mrs. Caldwell and Guy Caldwell.

Q. Would you relate what was said at that meeting, if anything, to the best of your recollection, please, sir?

\* \* \* \* \*

125 Q. (By Mr. Bruckner) What did she say? A. She said, "I am surprised at you, as long as you have been working for us." And I said, "What are you talking about?" She said, "If you are dissatisfied you should go get yourself another job someplace else." She said, "You might as well start looking at someplace else." She went on to tell us the Circle M, that is a nut company like we are, "You might get a job down there, because you won't be here long." Then she jumped on Mrs. Bernardi.

MR. BROWNE: May that be stricken?

TRIAL EXAMINER: Yes.

THE WITNESS: She said, "Why don't you have your husband find you a job," and she said, "I am satisfied." Mrs. Caldwell said, "If you are unhappy I don't see why you don't look for another job." She said, "We think we are paying enough money for uneducated people," and she jumped on me again.

MR. BROWNE: Objection.

TRIAL EXAMINER: Sustained.

THE WITNESS: She told me I might as well start looking for a job, so I said, "I don't see what I am doing here." I said, "I am just a union steward and I was under the impression we were going to talk about the contract, and that was going to be all." And I went and got a  
126 chewing out. Mr. Caldwell and Newman, they, Mr. Caldwell said, "Bob," after he asked what I was doing over there, he said, "You —

TRIAL EXAMINER (interrupting): He said you talked out at the meeting?

THE WITNESS: At the meeting. I said, "What meeting?" He said, "You say you are an unhappy man." I said, "I couldn't make a statement like that before all those people because it is a blunt statement." So he and Mr. Newman Caldwell, his brother, they talked about what time to set this voting over there across the street.

Q. (By Mr. Bruckner) What was said when they were talking about setting the voting? A. Well, they was trying to set a time, and in the



meantime they wanted to know if Mrs. Bernardi was going to have anything to do with the meeting. And she said she didn't think she would have anything to do with it. That is when Mr. Guy Caldwell called Mr. Barker, or his secretary called Mr. Barker, and Mr. Barker was on the phone. What the discussion was I don't know.

Q. Can you recall anything else at that meeting? A. I think they set the time for 1:00 o'clock. At least, we left and went to lunch, and we went across the street at 1:00 o'clock.

Q. Did you attend the meeting at 1:00? A. Yes.

127 Q. Were you paid for your attendance at this meeting? A. I guess I was; I didn't check the time.

Q. What are your usual hours you work? A. Fifty hours a week.

Q. What hours of day? A. Nine hours, 6:00 to 3:30.

TRIAL EXAMINER: You were paid from 6:00 to 3:30 on that day?

THE WITNESS: I believe I was.

MR. BRUCKNER: No further questions.

#### DIRECT EXAMINATION

BY MR. WHIPPLE:

Q. Did you hear before the ratification meeting or union meeting took place at 1:00 p.m., did you hear any of the supervisors make any statements about shutting the machines down and going over to the meeting? A. Yes, I did.

Q. Who said that? A. Mrs. Soloman, she is a floor lady in the nut department. She came and told us to cut off our machine and they were going to be voting over there across the street, so that is what we done.

Q. You went across the street? A. Yes.

\*

\*

\*

\*

\*

128

## CROSS-EXAMINATION

BY MR. WILLARD

\* \* \* \*

Q. And it was Francis that said you were an unhappy man?

A. That is what Mr. Caldwell said.

129 Q. Somebody said you were an unhappy man? A. That is what he said.

Q. He said that somebody said you were an unhappy man? A. That is what he said.

Q. Were you an unhappy man? A. I told him I wouldn't have been there 14 years if I were.

Q. Is Guy a swearing man? A. When he gets pretty angry he will.

\* \* \* \*

## HELEN MEALY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WACKNOV

\* \* \* \*

Q. Where are you employed? A. At Guy's Foods.

Q. For how long? A. Three years.

Q. And where do you work; in what department? A. In the nut department.

Q. Now, Mrs. Mealy, directing your attention to on or about the fourth of May, that is, a day or two before the National Labor Relations Board election, do you recall a conversation with any company supervisor on that day? A. Before the election?

Q. A day or so before. A. Yes; I recall a conversation with Elizabeth Soloman. She is the supervisor of the nut department.

Q. To the best of your recollection what did Elizabeth Soloman say to you? A. She asked me why I was wearing the ABC button instead of the Packers and Drivers. She said, "Why do you hate the company?" I said

131 "Well, I haven't any grievance against the company. The only answer is money." And she said, "Oh, no, it's better to be loyal; loyalty is better than money."

Q. Is this all the conversation you can recall? A. Yes.

Q. At the time were you wearing a sign? A. Yes; I had an ABC sign.

Q. How did the conversation start? Who started it? A. She did.

Q. Now, Mrs. Mealy, you have heard testimony regarding the union meeting on March 5, here in this room? A. Yes.

Q. Did you attend this meeting? A. Yes.

Q. Now, how did you happen to attend this meeting on March 5?  
A. Well, Elizabeth Soloman came over to us and she said we had to go over to vote, over to the next building.

MR. WILLARD: I am going to ask that answer be stricken on the ground there is no allegation Elizabeth Soloman directed anyone to attend the meeting. We are not prepared to defend that allegation. There is no allegation to that effect.

TRIAL EXAMINER: You have time to get any evidence you need along that line. If you run into any problems let me know on time.

MR. WILLARD: Is General Counsel going to amend?

132 MR. WACKNOV: At this time General Counsel asks leave to amend the complaint alleging that Elizabeth Soloman was one of the supervisors who did direct people to attend the union meeting on March 5, 1965.

MR. WILLARD: I strictly object to allowing this. General Counsel has known of this allegation, I am sure the record will show, for literally months. If they were going to make it they should have filed at the time they filed the last complaint. There is no excuse for amendment on this type of allegation.

TRIAL EXAMINER: Maybe he was guilty of dereliction. I won't pass on that. If he wants to amend his complaint in that respect he may do so. If you have any problems in meeting it, let me know when the time comes.

MR. WILLARD: Specify the paragraph number.

MR. WACKNOV: The complaint number which the General Counsel wishes to amend at this time is case number 17-CA-2675, paragraph 6(c) and the amendment is to the effect —

TRIAL EXAMINER (interrupting): You want to amend paragraph 6(c).

MR. WACKNOV: That is correct.

TRIAL EXAMINER: Your amendment would be to add the name of Elizabeth Soloman to paragraph 6(c).

MR. WILLARD: May I inquire if the General Counsel also wishes  
133 to amend 17-CA-2632, paragraph 5 sub (e) which contains the identical allegation. It seems to be such a serious matter. It is the identical allegation.

MR. WACKNOV: I believe at this time we don't need to amend that complaint so long as this complaint contains the allegation of General Counsel.

TRIAL EXAMINER: He doesn't wish to amend.

MR. WILLARD: I, of course, would renew my objection.

TRIAL EXAMINER: Overruled. The amendment is allowed.

Q. (By Mr. Wacknov) Mrs. Mealy, you testified as to the conversation between you and Elizabeth Soloman. Now, what did you do after this conversation you had with her? A. I continued working.

TRIAL EXAMINER: I didn't hear you.

THE WITNESS: I continued working. I was working when she was talking to me, so I continued working.

TRIAL EXAMINER: Did you go over to the meeting?

THE WITNESS: Yes, I did.

Q. (By Mr. Wacknov) Did other people in your department go over to the meeting? A. Yes; we all went over to the meeting.

Q. And to the best of your recollection could you tell us what happened at the meeting? A. Well, they were all shouting and it was confusing, and Lucille Bernardi tried to tell them that it was illegal and they

wouldn't listen, so we didn't stay there. We went back to the nut room.

134 Q. About how many people went back to the nut room? A. Every-one of us, about 30 of us.

Q. And when you got back to the nut room what did you do? A. Well, we started to work and Mr. Guy came in and stood at the end of the line and he said, "You better go back over there and vote or else, and if you don't you will never have a chance to vote again."

Q. Can you describe Mr. Caldwell's appearance at this time? A. He was very angry.

MR. WILLARD: I am going to object to his appearance.

TRIAL EXAMINER: What is the relevancy?

THE WITNESS: He was very angry.

MR. WACKNOV: I think it is material.

TRIAL EXAMINER: I will let it stand.

Q. (By Mr. Wacknov) About how far away from you was he standing when he made this statement? A. Maybe two feet.

Q. Did he just speak it or shout it? A. He shouted it.

Q. To the best of your recollection has Mr. Caldwell ever shouted at employees before? A. I have never seen him angry before.

Q. And after Mr. Caldwell shouted at you to return to the meeting what did you do? A. We went over.

135 Q. Were you paid for your attendance at this meeting? A. Yes.

\* \* \* \*

138 ROBERT LOUIS JOHNSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. WACKNOV:

\* \* \* \*

Q. Mr. Johnson, are you presently employed at Guy's Foods?

A. Yes.

Q. For how long have you been employed there? A. About 11 months.



Q. Directing your attention to March 5, 1965, that is the day of the union meeting at the plant, did you attend that meeting? A. Yes, I did.

Q. And did you remain at the meeting until it ended? A. No, I didn't.

Q. What happened? A. Well, after we got over to the meeting Mrs. 139 Lucille Bernardi, the president, stated if they continued with the meeting it was illegal. As far as she was concerned there wouldn't be any meeting, period. Since she stated that and she was the president most of us left, and I was one of them.

Q. What department do you work in? A. The nut department.

Q. About how many people left the meeting room with you? A. The exact number I couldn't say, but it was quite a few.

TRIAL EXAMINER: Approximately; 15, 20?

THE WITNESS: Maybe 25.

Q. (By Mr. Wacknov) Did you go back to work? A. Yes; I went back to work.

Q. What happened when you went back to work? A. Well, me and Jimmy Johnson, that is another employee, he was taking out a trash cart and I was getting out nuts, and just as we started through the garage Mr. Guy Caldwell asked us if we had been to the meeting and we told him yes. And we stated the president stated there wasn't going to be a meeting and we left, and he advised there was to be a meeting and for us to go back there.

Q. Who said there was to be a meeting? A. Mr. Guy Caldwell.

Q. To the best of your memory what did Mr. Guy Caldwell say?  
A. He informed us there was going to be a meeting and for us to go back over there.

140 Q. And you say there was another employee with you at the time?  
A. Yes.

Q. And who was that? A. Jimmy Johnson.

Q. What did you do after Mr. Caldwell told you to go back to the meeting? A. We went back to the meeting.

Q. Were you paid for the time you were at the meeting? A. Yes, I was.

\* \* \* \* \*

142 E. W. HAMILTON

143 was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. WACKNOV:

\* \* \* \* \*

Q. Mr. Hamilton, where are you presently employed? A. Guy's Foods, Inc.

Q. And for how long? A. Six years.

Q. Directing your attention to March 5, 1965, the day of the union meeting, did you attend that meeting? A. Yes, I did.

Q. And would you please explain what happened at that meeting just briefly? A. We went to the meeting and the president got up and said that the meeting was illegal, and the people started shouting and hollering and so she said as far as she know there was no meeting, so far as she is concerned.

Q. So what did you do? A. I turned and walked out with the crowd.

Q. About how many people walked out, approximately? A. Approximately 50 people.

144 Q. Now, when you turned and walked out where did you go? A. Back to the plant.

Q. And did you begin work? A. Yes.

Q. And what happened then? A. Well, Mr. Newman and Clark told a bunch of us to go back and vote.

Q. Who is Clark? A. Clark Bacon, a supervisor.

Q. What did they tell you? A. To go back to the meeting and vote.

Q. Who is Newman? A. He is Guy Caldwell's brother.

Q. Once again, to the best of your recollection what exactly did Mr. Bacon or Mr. Newman Caldwell say to you? A. They told us to go back and vote, go back to the meeting and vote.

Q. Directing your attention to the 12th of March, Mr. Hamilton, on that day did you happen to have a conversation with any company supervisor? A. Mr. Newman Caldwell.

Q. And to the best of your recollection what was said during that conversation? A. I went up to him to ask him about a job and he asked me about the cards I had been passing out.

145 Q. What did you say? A. I told him I hadn't been passing out cards.

\* \* \* \* \*

Q. (By Mr. Wacknov) Did he mention at the time what kind of cards he thought you were passing out? A. No, he didn't.

\* \* \* \* \*

Q. (By Mr. Wacknov) Mr. Hamilton, once again, what did Mr. Caldwell say to you? A. He asked me about the cards that I had been passing out, how about signing one.

TRIAL EXAMINER: Who was going to sign one?

THE WITNESS: Mr. Newman asked me if he could sign one.

Q. (By Mr. Wacknov) What did you say? A. I told him I didn't have any cards.

146 Q. Did he reply? A. He said he heard I had been passing them out to employees.

Q. Did he say anything else? A. No; I walked away.

Q. Now, Mr. Hamilton, sometime during that same day did you have a conversation with another company supervisor? A. Yes.

Q. And who was that supervisor? A. Mr. Clark Bacon.

Q. What did Mr. Bacon say to you and you say to him? A. He asked me about the cards, but I told him I didn't have any cards and I wasn't passing out cards, and he said he had definitely heard I was passing out cards.

TRIAL EXAMINER: Did he say what kind of cards they were?

THE WITNESS: No, he didn't.

Q. (By Mr. Wacknov) Was this word "union" mentioned in this conversation? A. He told me that even if the ABC union got in that it really

would mess the plant up; it wouldn't be any more overtime and stuff like that.

\* \* \* \* \*

147

## CROSS-EXAMINATION

BY MR. WILLARD:

Q. Mr. Hamilton, you heard Mr. Johnson testify just before you. Is that correct? You were here, you have been in the room? A. Yes.

Q. You heard him testify that 25 people walked out of the meeting and then after listening to his statement you think maybe it is 50, and you testified it was 50 people that walked out. Is that based on your own knowledge or hearing Mr. Johnson testify? A. That is what I mean, approximately 50 people.

Q. If you were saying approximately 50 people, how much might it vary on either side?

MR. WACKNOV: Objection.

TRIAL EXAMINER: I think it might vary as much as 49.

MR. WILLARD: I think it would be helpful. It could vary one or so on one side and more if you worked with negative numbers. I wonder what Mr. Hamilton thought was approximate.

THE WITNESS: I would say between 25 and 50 people.

\* \* \* \* \*

148

Q. [By Mr. Willard] (Interrupting) What department do you work in? A. I drive [a] truck and I work in the plant loading out sometimes, too.

Q. You drive a truck and load sometimes? A. Yes.

Q. This is the warehouse area? A. Yes.

Q. And Clark Bacon and Newman came through together. Were they speaking in unison, both saying, both like a singing duet, go back to the meeting? That is what you testified they told us to go back. A. They told us to go back to the meeting and vote.

Q. Which one of them did the telling? A. They were talking to the other.

Q. They were talking to each other? A. No; they were talking to us. I heard Newman Caldwell and Clark Bacon say, "Go back and vote."

149 Q. Who were they talking to? A. Us; the employees.

Q. Were they all assembled together? A. We were working around together.

Q. Let's take Newman; what did Newman say? A. He said, "Go back to the meeting and vote."

Q. He just said, "Go back to the meeting and vote"? A. Yes.

Q. Clark Bacon, did he say exactly the same thing? A. "Go back to the meeting and vote."

Q. That is all that was said? A. Yes.

\* \* \* \* \*

Q. And you had a conversation about March 12 with Clark Bacon about overtime. Is that correct? A. It wasn't overtime. It was about passing out cards, too. That is what he asked me about.

Q. He asked you about passing out cards?

150 Q. How did overtime get into the picture? A. He went to tell me if the other union got in it would mess up things.

Q. Did you tell —

TRIAL EXAMINER (interrupting): The witness hasn't finished.

MR. WILLARD: Go ahead with your answer.

THE WITNESS: Well, that is what he told me.

Q. (By Mr. Willard) Did you mention a 15-cent-an-hour wage increase that you had been promised by Clark? A. No.

MR. WACKNOV: Objection.

TRIAL EXAMINER: Overruled.

Q. (By Mr. Willard) It was just out of the clear blue sky he started talking about overtime? A. He called me up; he called me to him.

Q. And started talking about overtime? A. Talking about cards at first.

Q. Then suddenly shifted to overtime? A. He was explaining the situation to me.



Q. When did you sign an authorization card with ABC.

MR. WACKNOV: Objection.

TRIAL EXAMINER: Overruled.

THE WITNESS: To the best of my knowledge it was before Christmas, during November.

\* \* \* \* \*

153

Kansas City, Missouri,  
Wednesday, July 21, 1965.

\* \* \* \* \*

156

RUBY PARDOE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your name?

THE WITNESS: Ruby Pardoe, P-a-r-d-o-e.

#### DIRECT EXAMINATION

BY MR. WACKNOV:

Q. What is your address? A. 3825 Troost.

Q. Kansas City, Missouri? A. Yes.

Q. Are you presently employed? A. No.

Q. Were you formerly employed by Guy's Foods? A. Yes.

Q. When did you begin your employment with the company? A. It was around September 10, 1962.

Q. When did your employment at the company terminate? A. May 10, 1965.

Q. Now, during the time you were working for the company, in what department were you working? A. The nut department.

157 Q. Directing your attention to on or about the 3rd of May, 1965, that is about two days before the National Labor Relations Board election, did you happen to have a conversation with any company supervisor on that day? A. Yes, I did.

Q. Who was that supervisor? A. Elizabeth Soloman.

Q. What is her capacity with the company? A. She just gives orders back there.

Q. Now, to the best of your recollection, what did Elizabeth Solomon say to you that day, if anything? A. She wanted to know if I was going to vote for A.B.C., because I had an A.B.C. sticker on.

Q. What did you reply? A. I told her I would vote the way I wanted to vote.

Q. Did she say anything else? A. Not right then.

Q. Now, directing your attention to later that same day, did you happen to have another conversation with her? A. Yes.

Q. What did she say during this conversation and what did you say back to her? A. She wanted to know if I knew how the rest of the people  
158 were voting. I told her I knew how some of them were voting but I wasn't saying.

Q. How did the conversation start? A. She just walked up and asked me how I was going to vote and the way the other people were going to vote.

Q. Did you happen to — were you wearing any sort of a union badge or sign? A. I was wearing an A.B.C. sticker.

Q. Did she say anything to you about that? A. She said if I had any sense at all I would take the A.B.C. sticker off and put the Packers and Drivers sticker on.

\* \* \* \* \*

Q. (By Mr. Wacknov) In order to refresh your recollection on this matter, could I ask you if you ever had any other conversations with Elizabeth Solomon with regard to how you were going to vote? A. Yes. She wanted to know if I was going to vote for A.B.C.

Q. About how many conversations did you have regarding this?

A. She has asked me three or four times if I was going to vote for A.B.C.

159 TRIAL EXAMINER: Were they all on that same day or different days?

THE WITNESS: They were on different days that I recall.

\* \* \* \* \*

## CROSS-EXAMINATION

BY MR. WILLARD:

Q. Mrs. Pardoe, when were you terminated, what day?

MR. WACKNOV: Objection. Could we clarify something for the record?

MR. WILLARD: May we go off the record?

160 TRIAL EXAMINER: All right. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Let's get the record straight. I take it you are withdrawing the objection?

MR. WACKNOV: Yes, sir.

Q. (By Mr. Willard) When were you terminated? A. May 10, 1965.

Q. On May 18, you gave a statement to the National Labor Relations Board in which you stated you were terminated on May 17, 1965. Which date is correct? A. It was May the 10th.

TRIAL EXAMINER: What difference does it make?

MR. WILLARD: I would like to make out. It is evidence of previous inconsistent statements going to the question of credibility.

TRIAL EXAMINER: I don't think so at all. If you want to examine the witness relevant and material to the issue in which she has given inconsistent statements, that is all right. What date she was terminated if, in fact, she was terminated, is not material here.

Q. (By Mr. Willard) Was Mrs. — is it Miss or Mrs. Elizabeth Soloman, anyway, how long has she been your supervisor? A. Almost three years.

161 Q. Do you get along with Miss Soloman? A. I did up until the election.

Q. You testified that on May the 3rd she — Soloman approached you and wanted to know if you were going to vote A.B.C. At that time you had an A.B.C. badge on? A. Yes, I did.

Q. Can you give us the exact or nearly exact language Soloman used? A. She wanted to know if I was going to vote for A.B.C.

Q. Is that what she said? A. That is exactly what she said.

Q. She said, "I want to know if you are going to vote for the A.B.C."?

A. Yes.

Q. What time of day was that? A. It was early in the morning.

Q. Later on she talked to you again that same day? A. Yes.

Q. What did she say again? A. She wanted to know if I knew how the rest of the girls were voting.

\* \* \* \* \*

162 Q. Did you testify that there was a fourth conversation that same day? A. I don't know. She talked to me three or four different times about the conversation.

Q. All the same day? A. No, it wasn't on the same day, not all of it.

Q. You testified to three conversations on one day. A. Then she asked me on one different day.

163 Q. Was it before or after? A. It was after.

Q. It was after. One day after, two days after? A. If I recall right, she asked me the following day if I was going to vote for A.B.C. because I had a sticker on. And she said, "If you had a lick of sense you would take the A.B.C. sticker off and put a Packers and Drivers sticker on."

Q. Prior to this date, she had no conversations with you about the election? A. Up until May the 5th.

Q. When did these conversations take place? A. On May the 3rd.

Q. Prior to that time she didn't talk to you about the union? A. I don't believe so.

Q. It all occurred on May the 3rd except maybe one occurred after that? A. Yes.

Q. But you are not sure about the one after that? A. I am not sure about what day it was, but she did tell me to take the sign off and put a Packers and Drivers sign on.

Q. Didn't you testify that she said if you had a lick of sense you would? A. Her exact words, 'If you had a lick of sense you would take the A.B.C. sticker off and put a Packers and Drivers sign on.' That is exactly what she said, and that was the day before the election.

164 Q. That was the day before the election, not May 3rd? A. She told me that the day after, she wanted to know which way the other girls was voting, which was May the 4th.

Q. Now I am confused. I understood on May the 3rd she had a conversation with you in the morning. A. Yes.

Q. Then I thought you said later that same morning she said 'If you had a lick of sense you would take the sticker off.' A. It was either in the morning or the middle of the evening.

TRIAL EXAMINER: Was it the same day or what day was it?

THE WITNESS: I believe it was on the same day that she said that.

Q. (By Mr. Willard) Then we still don't have the conversation on May the 4th. A. She talked to me on May the 4th.

Q. You haven't told us what she said. A. I told you what she said.

Q. What did she say on May the 4th. A. She told me to take the A.B.C. sticker off, she said, 'If you had a lick of sense you would take the A.B.C. sticker off and put a Packers and Drivers sticker on.'

Q. I thought you said she said that on May the 3rd? A. She said that on May the 4th. I am pretty sure of it but I couldn't come right down and swear on it.

165 TRIAL EXAMINER: What counsel wants to know, was that statement made on May 3rd or 4th, or was it on both dates?

THE WITNESS: I believe it was on May the 4th.

Q. (By Mr. Willard) And her exact words were, 'If you had a lick of sense you would take the A.B.C. sticker off'? A. Yes, it was.

\*

\*

\*

\*

\*



## MAGGIE SANDIFER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WACKNOV:

\* \* \* \* \*

166 Q. Where are you employed? A. Guy's Foods.

Q. For how long have you been employed there? A. Nine years.

Q. Now, are you a member of the Packers and Drivers Union?

A. Yes, I am.

Q. What office do you hold? A. Secretary-treasurer of Local No. 3.

Q. Now, directing your attention to the 4th of March, 1965, did you circulate a petition for a union meeting at the plant? A. Yes, I did.

Q. Did you draw up the petition yourself? A. Yes, I did.

Q. And could you tell us — relate when during that day, during March 4th, when you got the employees to sign this petition, did you get the employees to sign this petition on March 4th? A. No, not on March 4th.

Q. On what day did you get them to sign the petition? A. That was March 5th. It was March 4th at night when I asked another girl to pass it around for me.

167 Q. Then on March 5th is when you did circulate it? A. Then I passed it around.

Q. When on March 5th, at what times during the day — did you get the employees to sign this petition on March 5th? A. Yes.

Q. At what times during the day did you get them to sign this?  
A. When I came in in the morning. It was around 4:00 o'clock and I don't start to work until 5:00. I got most of the chip department while they were coming to work and then some of the nut people and the garage people that come in early.

Q. Can you tell me about how many people signed the petition all together, just approximately?

MR. WILLARD: Objected to, incompetent.

THE WITNESS: Seventy, seventy-five.

TRIAL EXAMINER: Is that the number of people that signed the petition or the number you got to sign?

THE WITNESS: The number I got to sign.

MR. WACKNOV: If I could go on —

THE WITNESS (interrupting): That was the number that signed it.

Q. (By Mr. Wacknov) And early in the morning before work when you talked to these people, how many would you say signed it then? A. I would say it was about 33 to 35.

Q. Did you circulate the petition at any other times during that day?

168 A. Yes.

Q. And just for the record, when were those times? A. On my break, on my lunch period and then I got about seven or eight people in the chip department during the time I was working around the machines and things because I kept it in my pocket and they hadn't come in early and I didn't catch them.

Q. Are you sure, to the best of your recollection, that it was seven or eight?

MR. WILLARD: I am going to object to it. He is leading his own witness.

TRIAL EXAMINER: She may answer.

THE WITNESS: To the best of my recollection, it was that many during working hours because the rest of them I got mostly during my break and lunch period.

Q. (By Mr. Wacknov) Could it have been more?

TRIAL EXAMINER: Anything could have happened.

THE WITNESS: It could have been.

Q. (By Mr. Wacknov) You say that you circulated this during working hours in the chip department? A. Yes.

Q. And that —

MR. WILLARD (interrupting): I am going to object to this line of

questions as not relevant to any issue. They appear to be eliciting some sort of soliciting problem.

TRIAL EXAMINER: Tell us what you are getting at.

169 MR. WACKNOV: It is relevant to the issue that the company knew that this petition was being circulated on company time and they allowed it to be circulated.

TRIAL EXAMINER: That is what I thought you were trying to establish. Go ahead.

Q. (By Mr. Wacknov) Now, who was the supervisor in the chip department where you worked? A. Irene Joslyn.

Q. About how many employees are in that department? A. I don't know exactly, but it should be around --

Q. (Interrupting) Just approximately.

TRIAL EXAMINER: Give us your best guess.

THE WITNESS: About 50.

Q. (By Mr. Wacknov) Was Irene Joslyn the supervisor there that day? A. Yes.

Q. In the course of her supervisory capacities, does she regularly walk around the area? A. Yes. She don't come in until 7:00 o'clock.

MR. WILLARD: I am going to object to this line of questioning on Irene whatever her name is in that the allegations of both complainants are that only Guy and Newman permitted this petition to be circulated. I don't know who this woman is, Mr. Trial Examiner.

170 TRIAL EXAMINER: It hasn't been established yet that she is a supervisor. There is no admission in the answer she is a supervisor, no allegation she exists.

Q. (By Mr. Wacknov) Who is your supervisor in the chip department? A. Irene Joslyn.

MR. WILLARD: I object to that on the ground it calls for a legal conclusion if he is attempting to establish she is a supervisor within the meaning of the Act.

TRIAL EXAMINER: What about that?

Q. (By Mr. Wacknov) Mrs. Sandifer —

TRIAL EXAMINER (interrupting): Do you withdraw that question?

MR. WACKNOV: No, sir. I would like to go into supervisory status.

TRIAL EXAMINER: All right.

Q. (By Mr. Wacknov) What does Mrs. Joslyn do during the day —

MR. WILLARD (interrupting): May I interrupt?

TRIAL EXAMINER: Yes.

MR. WILLARD: Without admitting anything except the status of Irene Joslyn, she is a floor lady and we would stipulate she is a supervisor within the meaning of the Act.

TRIAL EXAMINER: Thank you.

Q. (By Mr. Wacknov) You said something about you didn't circulate the petition until 7:00 o'clock. A. I said I circulated the petition around 4:00 o'clock in the morning.

171 Q. Now, I am speaking of about when you circulated it in the chip department during working hours. About what time was this? A. Well, it was just one or two or three girls would come in that I didn't get early that morning that I would catch during the time I was on the floor.

Q. Do you have any idea, Mrs. Sandifer, about what time of the day this was?

MR. WILLARD: Hasn't she already testified to that?

TRIAL EXAMINER: She said it was after 7:00 o'clock.

THE WITNESS: When a few of them came in, yes.

Q. (By Mr. Wacknov) During this time was Mrs. Joslyn the supervisor present in the working area? A. Well, I don't remember seeing her. She wasn't where I was when I was passing the petition.

Q. Was she supervising the chip department at that time? A. Yes.

Q. Now, who else was circulating a petition at the time? A. Charley Thompson.

Q. How do you know that? A. Because I gave it to him.

Q. And Mrs. Sandifer, do you know when during the day he circulated that petition? A. Yes, I know he circulated it on his lunch period

172 because we eat at the same time, and he also circulated it on his break.

TRIAL EXAMINER: The petition Mr. Thompson circulated was like the one you were circulating?

THE WITNESS: Yes, identical.

Q. (By Mr. Wacknov) Do you know whether or not he circulated the petition during his working hours? A. No, I don't know other than his break and lunch period.

\* \* \* \* \*

173

# CROSS-EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

174

TRIAL EXAMINER: Back on the record.

During the course of the off-the-record discussion with counsel, the stipulation was reached to the following effect, that the petition which this witness circulated among the employees reads as follows: If you are interested in your Local Union No. 3 having a meeting at the plant in order to discuss the new contract and to vote, sign this petition — Thank you. That is followed by the signatures of some 41 separate employees. Do the parties so stipulate?

MR. WILLARD: Respondent so stipulates.

MR. WACKNOV: General Counsel so stipulates.

MR. WHIPPLE: Charging Party so stipulates.

MR. BARKER: So stipulated.

Q. (By Mr. Willard) Now, we have a stipulation as to the content of the petition and one copy of it had 41 signatures. Do you recall how many signatures were on the other copy? A. I haven't really seen it since that day I turned it over to Irma. It should be about 17 or so on that one.

TRIAL EXAMINER: Seventeen or so on the copy that was circulated by Mr. Thompson?

Q. (By Mr. Willard) Was that the one circulated by Mr. Thompson?

A. The one circulated by Mr. Thompson.

\* \* \* \* \*



177 Q. (By Mr. Willard) When did you present this petition to Guy Caldwell? A. I didn't really present it to Guy at all. We really met in order to get Lucille to see we wanted this meeting at the plant and we had the petition with us and I was really showing the petition to Lucille and proving to her the majority of the people wanted the meeting in there.

Q. You and Irma approached Guy Caldwell earlier in the morning?

A. Yes. But we never mentioned the petition.

TRIAL EXAMINER: You did show it to Mr. Caldwell?

THE WITNESS: No.

TRIAL EXAMINER: Who did you show it to?

Q. (By Mr. Willard) Lucille Bernardi? A. Yes.

Q. To get it in time, there was a meeting in the morning with Guy alone and you and Irma Adams? A. Yes.

Q. About what time was that, roughly? Before or after lunch break? A. It was after my break because it was about a quarter of 8  
178 before Irma came to work. She didn't come to work but she came down in order to talk to Guy about the meeting.

Q. After there was a meeting in Guy's office, is that the one at which you say Lucille Bernardi was present? A. Yes.

Q. That was on March the 5th? A. Yes.

Q. Were you present at that meeting? A. Yes.

\* \* \* \* \*

185 Q. Did Frances Caldwell have anything to say about people being discharged? A. The only thing I can remember Frances saying when we were in the office and we were all having kind of a discussion about having this meeting at the plant and I remember Frances saying if you all are not happy here, why don't you go elsewhere, you can go elsewhere or something because we are a happy family. And when she was talking she was talking to the group though, as I understand it, she wasn't looking at any certain person.

\* \* \* \* \*

197

IRMA ADAMS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WACKNOV:

Q. Would you please state your name and address. A. Irma Adams, 3330 Elmwood, Kansas City.

Q. Are you presently employed by Guy's Foods? A. Yes.

Q. For how long? A. For about 20 years.

Q. Are you a member of the Packers and Drivers Union? A. Yes.

Q. And are you an officer of that union? A. Yes, I am.

Q. What office do you hold? A. Vice president.

\*

\*

\*

\*

\*

202

Q. Mrs. Adams, I now hand you what has been marked as General Counsel's Exhibit No. 2. Would you identify that exhibit please. A. Yes.

Q. What is that? A. This was the signs we made for the Packers and Drivers, the badges for them to wear before the election.

Q. By "we", who do you mean? A. Lois Behymer and myself.

Q. Who is Lois Behymer? A. She is secretary of the National Association of Packers and Drivers.

Q. Now, could you explain exactly what you and Lois Behymer did in order to get these signs prepared? A. Yes.

MR. WILLARD: I am going to object to that as it is not relevant to any issue in this case.

TRIAL EXAMINER: What difference does it make?

MR. WACKNOV: I would like to withdraw that question.

Q. (By Mr. Wacknov) Would you please state where you made these signs.

MR. WILLARD: Object to that as also irrelevant.

TRIAL EXAMINER: It may be irrelevant. I don't know.

203

THE WITNESS: Yes, we made, or started out anyway, down on our job. We made, I would say, she and I, about 10 and then we did the rest of them at home.

MR. WILLARD: I move the answer be stricken on the grounds the question and answer are not related to any issue in this case.

TRIAL EXAMINER: It will stand.

Q. (By Mr. Wacknov) And you said you made these signs on company time? A. Well, probably about 10.

Q. Now, directing your attention, Mrs. Adams, to the afternoon of either May 3rd or 4th, in other words, some time before the National Labor Relations Board election, did you have a conversation with any company supervisor regarding these signs? A. Not a supervisor, no.

Q. Any company representative? A. Yes.

Q. And who was that representative? A. Guy.

Q. Guy Caldwell? A. Yes.

Q. To the best of your recollection what took place and what was said by you and by Mr. Caldwell during this conversation? A. Well, I  
204 had asked Guy to — would he take — I didn't say badges, but I asked him would he take something to Wichita for me and he said he would. And I sent about 30 badges down by Guy and in a paper bag, and I think at one time — I said brown, I don't know whether it was brown or white, anyway, it was in a bag and I sent it down to Wichita.

TRIAL EXAMINER: What did you tell him to do, anything?

THE WITNESS: Not anything.

TRIAL EXAMINER: When he got to Wichita, was he supposed to give them to somebody?

THE WITNESS: I didn't tell him what to do with them.

Q. (By Mr. Wacknov) Did you tell Mr. Caldwell at the time what type of badges were in the envelope? A. No, I didn't say badges, I just asked him to take something down to Wichita. I had them in a bag and I said, "Will you take these to Wichita for me."

Q. Was there anything on the outside of the bag? A. No.

TRIAL EXAMINER: Was the bag sealed?

THE WITNESS: No. I had it folded over.

Q. (By Mr. Wacknov) And did you tell Mr. Caldwell to give the signs to any particular person? A. No, I did not.

\* \* \* \* \*

206

## CROSS-EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

207 Q. Can you tell us about when that conversation took place and who was present? A. Charley [Thompson] and Maggie and myself, about 9 o'clock.

Q. And did you approach Mr. Caldwell? A. We all went into the office.

Q. And what did you — did you say anything to Mr. Caldwell? A. Well, Maggie was the one who had said this at the present time.

208 Q. What did she say to Mr. Caldwell? A. We went in and we asked for the officers of the Packers and Drivers be called in to a special meeting, so that we could discuss the contract. See if we could have a meeting on company time so that we could discuss the contract.

Q. Did you tell Mr. Caldwell why you wanted to have a meeting on company property? A. I don't remember right at the time telling him why we wanted it just at this particular time.

Q. At your conversation at 9 o'clock, did Mr. Caldwell agree or tell you he would do anything? A. Well, he told us he had to call his attorney to see if it was all right and after — then he said later on that he would call a meeting.

\* \* \* \* \*

209 Q. Did Frances say anything to Bob Murphy? A. Not directly to Bob Murphy, no.

Q. Apparently she said something. Do you recall what she did say? A. Yes, she did say that she wanted all her employees to be happy there while they were working. And if they weren't happy they were welcome to find employment elsewhere, or something to that effect. That might not be just the exact words.

210

Q. At this meeting at 11 o'clock, what decision, if any, was taken and announced by Mr. Caldwell as to having a meeting, or — withdraw that question, if I may.

Was any agreement reached about having a meeting on company property? A. Yes.

\* \* \* \* \*

228

HARRY L. BROWNE

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WILLARD:

Q. State your name and address. A. Harry L. Browne, 1000 Power and Light Building, Kansas City, Missouri.

Q. And what is your occupation? A. I am a lawyer.

229 Q. With what firm? A. Spencer, Fane, Britt & Browne.

Q. Do you represent Guy's Foods, Inc. in labor relations matters?  
A. Yes, I have for a number of years.

Q. Can you tell us when the Association of Packers and Drivers union was first recognized at Guy's Foods, Inc.? A. It was shortly after, or immediately after they were certified by the Labor Board and, I think, that was somewhere in the neighborhood of the year 1956.

Q. I would like to direct your attention to the events which occurred in 1965, and I would like to hand you —

TRIAL EXAMINER (interrupting): I take it since the certification there have been recurring contracts over the years?

THE WITNESS: That is correct.

Q. (By Mr. Willard) Mr. Browne, for the purposes —

MR. WHIPPLE (interrupting): We object to the witness coaching the attorney.

TRIAL EXAMINER: We have an attorney on the stand and that's always difficult.

Q. (By Mr. Willard) Mr. Browne, have you practiced in the field



that is commonly referred to as Labor Relations Law? A. Yes, in Kansas City since 1949, exclusively in the field of labor law and prior to that time I was an attorney with the National Labor Relations Board, with the exception of three years in the U. S. Naval Reserve for the period between 1938 to 1949. The U. S. Naval Reserve was World War II.

230 Q. Have you written any technical articles in the field of labor relations? A. Yes.

Q. Have you written a number of them for law reviews? A. Yes.

TRIAL EXAMINER: What's the purpose?

MR. WILLARD: We are establishing Mr. Browne's qualifications as an authority in the labor relations field so we can put into the record what led up to the wage increase.

TRIAL EXAMINER: I am not going to permit Mr. Browne to offer any expert opinion.

MR. WILLARD: I am not asking him to testify as an expert but I am asking him to testify to the facts.

Q. (By Mr. Willard) I hand you Respondent's Exhibit No. 4 and ask you if that is a copy of the collective bargaining agreement between Guy's Foods, Inc., and the Packers and Drivers Association. Are you familiar with this contract, sir? A. Yes.

TRIAL EXAMINER: Did you participate in the negotiations leading up to that?

THE WITNESS: I don't know whether I did, Mr. Trial Examiner, or whether a lawyer from my office participated in it subject to my direction. I am familiar with this contract because I have assisted in the administration of it.

231 Q. (By Mr. Willard) And did you see a note from the Association of Packers and Drivers asking that that contract be reopened for modification and amendment? A. Yes.

Q. As a result were the negotiations started under your direction? A. Yes.

Q. Were they started or did something intervene? A. I think we

received a notice from the Association on -- by letter dated November 27, 1964, and we acknowledged the Association's letter on December 10. The day of our acknowledgment a petition was filed by the A.B.C. Union in Case No. --

\* \* \* \* \*

232 THE WITNESS: On December 10 or on or about December 10, I believe a petition was filed by the A.B.C.

Q. (By Mr. Willard) As a result of that, were negotiations suspended? A. Yes, they were.

MR. WILLARD: I would like to ask the reporter to mark for identification Respondent's Exhibit No. 8.

(The document above referred to was marked Respondent's Exhibit No. 8 for identification.)

Q. (By Mr. [Willard]) I hand you Respondent's Exhibit No. 8 for identification and ask if you can identify this document. A. Yes, that is the decision and order of the Regional Office, 17th Region, in Case No.

233 17-RC-4658.

TRIAL EXAMINER: What's that number?

THE WITNESS: 17-RC-4658, 4661, and 17-RC-4662.

Q. (By Mr. Willard) What's the date on that order, sir? A. The date is February 5, 1965.

Q. Do you recall when -- was a copy of this served upon you? A. Yes.

Q. Do you recall when you received it? A. I think it was the following day.

\* \* \* \* \*

234 TRIAL EXAMINER: With respect to Exhibit R-8, authenticity is stipulated.

MR. BRUCKNER: Yes.

\* \* \* \* \*

Q. (By Mr. Willard) What happened as a result? A. I instructed my associate, Mr. Willard, to commence negotiations as quickly as possible, because --

TRIAL EXAMINER (interrupting): Quickly as possible after what event?

THE WITNESS: After the Board's decision was handed down, Respondent's Exhibit No. 8, because of the short period of time before the contract expiration date and in view of the fact that the Regional Office had denied our request for an insulated period of time in which to negotiate.

\* \* \* \* \*

236 TRIAL EXAMINER: \* \* \*

I will receive this document for the limited purpose to show the Regional Director's decision issued on the petition in the numbered cases. It is received for no other purpose.

(The document above referred to, heretofore marked Respondent's Exhibit No. 8, was received in evidence.)

Q. (By Mr. Willard) After receipt of this petition, did you, were negotiations held, to your knowledge? A. Yes, they were held.

Q. Do you know when negotiations were held? A. The first meeting that we were able to get started on because of the widespread area in which this association had plants was on February 14, 1965, or, I beg your pardon, February 13, 1965.

Q. And as a result of those negotiations was an agreement reached?

MR. WHIPPLE: I would like to object to that again for the same reasons I have given previously: This is going into a line of testimony that is irrelevant to the issues here and trying to cover something that has already been litigated and beyond the scope of the complaint and the answer in this case.

237 TRIAL EXAMINER: Overruled.

THE WITNESS: Yes.

Q. (By Mr. Willard) Is that the document identified as Respondent's Exhibit No. 4? A. Yes, it is.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

Go ahead.

Q. (By Mr. Willard) I believe you testified that what we now know as R-4 was the agreement reached on February 15. A. Yes.

Q. Was there a supplemental agreement of March 1, 1965? A. Yes.

Q. And, to your knowledge, was this — did any representative of the Association advise you it would be submitted to the membership for approval, the agreements of February 14 and March 1? A. I believe the document provides that it is an agreement and — let me look at the document again, please. It was effective February 15, 1965 and then the agreement further provides it is understood the agreement must be submitted to the membership of the union for approval. If this agreement is not approved, it shall terminate.

238 MR. WILLARD: I would like to ask the reporter to mark as Respondent's Exhibit No. 9 this document.

(The document above referred to was marked Respondent's Exhibit No. 9 for identification.)

Q. (By Mr. Willard) I hand you Respondent's Exhibit No. 9 for identification and ask if you can tell us, tell the Trial Examiner what that document is. A. That is a letter which was prepared by you under my direction to Mr. Barker, as attorney for the Association, requesting that a matter be held in abeyance —

Q. (Interrupting) What matter? A. The question of ratification or approval not be submitted to the membership because of what was regarded as improvident circumstances as set forth in the letter.

MR. WILLARD: I offer Respondent's Exhibit No. 9 into evidence to show that the company asked that the Association of Packers and Drivers not ratify the contract at that time.

MR. BARKER: What's the date of that letter?

MR. WILLARD: March 12.

MR. BRUCKNER: General Counsel will object to the admission of this document on the grounds it is irrelevant and immaterial to the issues

of this case. Further, we submit that this letter clearly indicates — illustrates, that Respondent is trying to raise a question concerning representation which, I think, was previously ruled upon. The Trial Examiner ruling upon General Counsel's motion to strike —

239 TRIAL EXAMINER (interrupting): Let me ask you this, would you have any objection if this document were received for the limited purpose of showing such a letter was sent, not for the truth of the statement therein?

MR. BRUCKNER: I would have no objection to that.

TRIAL EXAMINER: It will be received on that basis.

(The document above referred to, heretofore marked Respondent's Exhibit No. 9, was received in evidence.)

Q. (By Mr. Willard) Mr. Browne, did you request that ratification be withheld or approval withheld? A. May I look at the exhibit?

MR. WHIPPLE: What is the question again?

TRIAL EXAMINER: Won't it speak for itself?

MR. WILLARD: You haven't admitted it for the truth of the matter in there.

MR. BRUCKNER: I object to this question. I think it is completely irrelevant and immaterial.

TRIAL EXAMINER: What was the question?

MR. WILLARD: I asked Mr. Browne if he had requested the Association of Packers and Drivers not to submit the contract for ratification or approval.

TRIAL EXAMINER: He may answer that.

240 THE WITNESS: Yes, I did. I should point out in the meantime that on March 12, I beg your pardon, on February 26, the A.B.C. and Teamsters filed a joint petition in 17-RC-4711, at least that was the date of the petition and we received it, that is, the company and the attorneys for the company received it on March 2, so we had a question again of representation that possibly was a valid question of representation.

MR. BRUCKNER: I will object to the last remarks and move they be stricken.



TRIAL EXAMINER: These conclusions will be stricken.

MR. WILLARD: I would like to ask the reporter to mark for identification Respondent's Exhibit No. 10.

(The document above referred to was marked Respondent's Exhibit No. 10 for identification.)

Q. (By Mr. Willard) I hand you Respondent's Exhibit No. 10 for identification and ask you if you can identify this document. A. Yes, this is a letter which I directed to the Regional Office of the Labor Board on April 12, 1965, with a copy to Mr. Barker and a blind copy to Guy Caldwell.

Q. What was the purpose of this letter, sir? A. Well, it was a letter — as the letter explains, I was interested in whether or not we could go ahead and execute the agreement that had been previously arrived at between the company and the Association.

TRIAL EXAMINER: You mean the agreement of February 4.

THE WITNESS: Yes.

MR. WILLARD: I offer Respondent's Exhibit No. 10 in evidence.

241 MR. BRUCKNER: We will object to the introduction of this exhibit on the grounds we previously raised, namely, such exhibits —

TRIAL EXAMINER (interrupting): The same grounds.

MR. BRUCKNER (continuing): — are completely irrelevant and immaterial to the issues.

MR. WHIPPLE: The Charging Party would also like to object for the same reasons.

TRIAL EXAMINER: I will receive it, again for the same purpose, received only for the purpose of showing such a letter containing this content was sent.

MR. WILLARD: Counsel for the General Counsel has offered to stipulate to the authenticity of three further exhibits, Respondent's Exhibit — the reporter will mark Respondent's Exhibit No. 11; Respondent's Exhibit No. 12; and Respondent's Exhibit No. 13.

(The documents above referred to were marked Respondent's Exhibits Nos. 11, 12, and 13, respectively, for identification.)

TRIAL EXAMINER: You have the same objections?

MR. BRUCKNER: Yes, sir. We will stipulate on the record to the authenticity.

MR. WHIPPLE: Yes.

MR. WILLARD: We are offering these documents to show the chain of events leading up to the granting of the wage increase.

242 MR. BRUCKNER: May General Counsel state his objections on the grounds they are irrelevant?

TRIAL EXAMINER: They are on the same grounds as they were before?

MR. BRUCKNER: Yes, sir.

TRIAL EXAMINER: They will be received for the limited purpose of showing this correspondence passed between parties, not for the truth of any of the statements contained therein or accuracy.

MR. WILLARD: I ask the reporter to mark Respondent's Exhibit 14 for identification.

(The document above referred to was marked Respondent's Exhibit No. 14 for identification.)

Q. (By Mr. Willard) Mr. Browne, I hand you the Respondent's Exhibit No. 14 and ask if you would identify it.

MR. BRUCKNER: I will stipulate to the authenticity.

MR. WILLARD: I will ask the reporter to mark as Respondent's Exhibit No. 15 for identification.

(The document above referred to was marked Respondent's Exhibit No. 15 for identification.)

MR. WHIPPLE: Identify 14.

MR. WILLARD: A letter from Frank Barker, Respondent's No. 15 is a letter dated June 18, 1965, addressed to Frank Barker, Jr. with the initial "H.L.B."

TRIAL EXAMINER: What is 15?

243 MR. WILLARD: A letter dated June 18, addressed to Frank Barker, Jr., with the initials - from Harry L. Browne, his signature did not appear

on the document itself, but, I believe counsel for the General Counsel will stipulate it was his.

I ask the reporter to mark Respondent's Exhibit No. 16, which is a letter dated July 6, 1965, to Frank Barker, Jr., from Jim Willard.

(The document above referred to was marked Respondent's Exhibit No. 16 for identification.)

MR. WILLARD: I offer Respondent's Exhibits 14, 15, and 16.

TRIAL EXAMINER: I take it you have the same objection.

MR. BRUCKNER: Yes, sir, they are irrelevant and immaterial to the issues at hand.

MR. WHIPPLE: The Charging Party is making the same objections that General Counsel has made, is making this time, and has made in the past in regard to these type of exhibits. Further, we would like to say these are strictly self-serving documents and for that further reason should not be received in evidence.

TRIAL EXAMINER: It will be received for the purpose of showing this correspondence being passed.

(The documents above referred to, heretofore marked Respondent's Exhibits Nos. 14, 15, and 16 were received in evidence.)

244 Q. (By Mr. Willard) Referring you to Respondent's Exhibit 14, were you advised by the attorney for the Packers and Drivers union that the February 14th agreement had been ratified?

MR. BRUCKNER: I object to this. It's hearsay, anything Mr. Barker told Mr. Browne. Mr. Barker is with the Association of Packers and Drivers and the respondent party in this case.

TRIAL EXAMINER: He has testified when he was so notified. It doesn't establish the legal effect of it.

THE WITNESS: I said yes, I was.

Q. (By Mr. Willard) By letter dated June 14, from Mr. Barker —

MR. WHIPPLE (interrupting): The exhibit speaks for itself.

TRIAL EXAMINER: Is it one of these exhibits?

MR. WILLARD: Yes. You haven't admitted it for that purpose.

TRIAL EXAMINER: Answer the question.

THE WITNESS: I have been advised earlier by Mr. Barker that the contract had been ratified. This is a letter that he wrote reiterating what he had said previously.

Q. (By Mr. Willard) Did he make a demand on you that the wage increases he negotiated be put into effect and made retroactive? A. Yes.

245 Q. Did you reach a decision on putting those wage increases into effect? A. Yes.

Q. Did you direct Guy's Foods, Inc., to put those wage increases into effect? A. Yes, they did.

TRIAL EXAMINER: When did you do that?

THE WITNESS: About the same time that Mr. Willard prepared his letter of July 6; which is Respondent's Exhibit 16, it was along about that time.

Q. (By Mr. Willard) You had discussed this possibility of putting the increases into effect with Mr. Caldwell prior to this time? A. Yes, I told him I wanted to think about it before I reached a final decision. And my recommendation to him was that he pay it and he accepted my recommendation and you wrote Mr. Barker.

\* \* \* \* \*

247

GUY CALDWELL

was recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

253

Q. Turning now to election day, May 5, were you in the plant around 5:00 o'clock in the morning? A. Yes, sir.

254

Q. Did you have conversations with a Labor Board agent? A. Mr. Hudson.

Q. What was the nature of that conversation? A. He said I was not to be in the voting area until the voting was over.

Q. Where had you been? A. Where had I been?

Q. Yes, where were you when this conversation took place? A. I didn't realize that our recreation room was close to the voting and I was going to get a cup of coffee, and he advised me there would be no more coffee until the election was over, and he very strongly emphasized it.

Q. Who selected the voting location at the Kansas City plant?

A. Mr. Hudson.

Q. Did anyone ask you to move any of those voting booths or change the construction? A. No, sir.

Q. You observed the voting booths yourself? A. Yes, sir.

\* \* \* \* \*

Q. (By Mr. Willard) Were there any open spaces — was any side of the voting booth open? A. No, sir.

255 TRIAL EXAMINER: How about the top?

THE WITNESS: No, sir.

Q. (By Mr. Willard) What was over the top? A. Mr. Hudson told us how he wanted the booths set up. We set them up and he inspected them the morning before the election and they were approved.

TRIAL EXAMINER: What was on top?

THE WITNESS: I think it was cardboard. I'm not sure. He wouldn't let me in the booth so I don't know.

TRIAL EXAMINER: You didn't inspect them?

THE WITNESS: No, sir, he inspected them but I didn't.

\* \* \* \* \*

257 CROSS-EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

258 MR. BRUCKNER (interrupting): We are talking about the meeting in Mr. Caldwell's office on March 5.

\* \* \* \* \*

259 Q. Did you shut down your plant that day to have a meeting? A. Yes, I would say so.



Q. Have you ever shut down your plant before to have a union meeting? A. No, sir.

Q. Did you pay the employees for their attendance at that meeting?  
A. We didn't dock them for being at the meeting, they were paid their regular time.

Q. Had employees ever been paid before for their attendance at a union meeting?

MR. WILLARD: Object, he has answered that question.

TRIAL EXAMINER: I don't think he answered this question.

THE WITNESS: As far as I know they have not.

260 TRIAL EXAMINER: Have there ever been, to your knowledge, union meetings during working hours?

THE WITNESS: No.

\* \* \* \* \*

262 TRIAL EXAMINER (interrupting): We have in the record that Mr. Browne knew it on March 2.

MR. WILLARD: We will stipulate the company had knowledge and Mr. Caldwell had knowledge.

TRIAL EXAMINER: Rephrase your question.

Q. (By Mr. Bruckner) Did you inform any of your employees prior to March 5 meeting that a representation petition had been filed?

MR. WILLARD: I renew my objection to relevancy.

MR. BRUCKNER: I think it ought to be more specific; one or two employees or the whole seven hundred.

TRIAL EXAMINER: The question is, did he advise any of them?

THE WITNESS: I think when you say "any" I can say yes.

Q. (By Mr. Bruckner) Can you recall which ones you advised?

TRIAL EXAMINER: Or how many?

THE WITNESS: I may have said something to two or three of the employees. As a general notification, I would say no, I didn't put out any written notification, no.

TRIAL EXAMINER: It was just a passing comment?

THE WITNESS: Yes, but as far as an official notification I would say no.

\* \* \* \* \*

265 CROSS-EXAMINATION

BY MR. WHIPPLE:

\* \* \* \* \*

267 Q. You knew that the meeting, the union meeting that was being discussed, was for -- or on March 5, 1965, was for the purpose of these so-called contract ratifications --

TRIAL EXAMINER (interrupting): I take it you are referring to the afternoon meeting?

MR. WHIPPLE: Yes.

MR. WILLARD: The question is vague and argumentative.

TRIAL EXAMINER: You may answer.

THE WITNESS: Yes.

\* \* \* \* \*

270 WILLIAM R. DUMMITT

was called as a witness by and on behalf of the Intervenor and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q. What is your name? A. William R. Dummitt.

Q. Where do you live? A. 616 West Charles.

Q. Are you the president of the National Packers and Drivers Association? A. Yes, sir.

\* \* \* \* \*

271 CROSS-EXAMINATION

BY MR. WILLARD:

Q. Has the Association of Packers and Drivers Union ratified the February 14-March 1 agreement with Guy's Foods? A. Yes.

\* \* \* \* \*

TRIAL EXAMINER: Let me ask you, is it your contention that the contract on February 14, 1965 was ratified or was not ratified?

MR. WILLARD: It was ratified.

TRIAL EXAMINER: By the employees?

MR. WILLARD: Yes.

TRIAL EXAMINER: Some of the contracts you have introduced here, don't they give you a contrary view?

272 MR. WILLARD: No, sir, Respondent Exhibits 9 through 16 will show we asked the union not to submit it for ratification for reasons not here relevant. We had asked the regional director about proceeding further to take whatever steps might be necessary to determine that it had been completed, then you get to Mr. Barker's letter of June 14 to Mr. Browne where he says to us that this has been approved by the membership and we demand that you abide by its terms.

TRIAL EXAMINER: How about Mr. Browne's reply?

MR. WILLARD: June 18, where he said we are not sure what we are supposed to do because there was a legal question, where Mr. Browne says we are not sure of the propriety at this stage of either executing the agreement or paying back back-pay, et cetera.

\* \* \* \* \*

TRIAL EXAMINER: I'll permit this witness to answer what steps were taken with respect to ratification, and when.

THE WITNESS: All locals, the different locals in the different sections all approved it by a majority vote.

TRIAL EXAMINER: When?

273 THE WITNESS: The exact dates I don't know. There were different locals.

TRIAL EXAMINER: Between what time, when was the first one, if you know?

THE WITNESS: March, somewhere around March 10, I would say.

TRIAL EXAMINER: Was the first one?

THE WITNESS: I believe it was, I'm not sure of the dates.

TRIAL EXAMINER: When was the last one?

THE WITNESS: May 12, I believe, that's when the Drivers Local here in Kansas City approved it the last time.

\* \* \* \* \*

284

Wichita, Kansas,  
Thursday, July 22, 1965.

\* \* \* \* \*

287

MR. WILLARD: Before Mr. Bruckner calls his witness, may I ask leave to amend my answer with respect to Complaint 2602, Paragraph VI, to amend our answer to that allegation, to allege that we have offered reinstatement to Ina Fay Richardson to all rights which she would otherwise be entitled to by letter July 7, 1965, and Ina Fay Richardson has accepted reinstatement and will return to work on July 26.

MR. BRUCKNER: Counsel for General Counsel has no objection.

TRIAL EXAMINER: The answer will be amended accordingly. I take it, then, that all questions of reinstatement are now mute and it is simply a question of back pay.

MR. BRUCKNER: I believe that is the issue.

\* \* \* \* \*

#### PAMELA ADDIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

288

Q. Prior to that what was your job with Guy's? A. I worked out in the plant.

Q. Miss Addis, were you aware that a representation election was held of Guy's employees on May 5th, 1965? A. Yes.

Q. Prior to that election, could you state whether or not you distributed signs for employees in the plant to wear? A. Yes.

Q. And I hand you General Counsel's Exhibit No. 2, Vote for Packers

and Drivers Union, and I ask, is that similar to the signs you distributed?

A. Yes.

289 Q. And when did you distribute these signs, on what date? A. I don't remember the exact date but I remember it was the day before the election.

Q. How did you happen to come into possession of any or all of these signs? A. Well, I got them from Guy Caldwell.

Q. And when did you receive them from Mr. Caldwell? A. Right after I took a break, I went in the office and picked them up.

\* \* \* \* \*

290 Q. (By Mr. Bruckner) Had anyone told you Mr. Caldwell had these signs? A. I asked Red.

TRIAL EXAMINER: Who is Red?

THE WITNESS: Kenneth Caldwell, Sr.

TRIAL EXAMINER: Is that where you found out the buttons were there?

THE WITNESS: Yes.

\* \* \* \* \*

#### CROSS-EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

291 TRIAL EXAMINER: Your first information about them was when Mr. Kenneth Caldwell told you they were in Wichita?

THE WITNESS: I asked him in the lunch room if we could wear them and he said yes, it would be all right.

TRIAL EXAMINER: Did you ask him after you got these badges or before?

THE WITNESS: I asked him before.

TRIAL EXAMINER: How did you know they were coming?

292 THE WITNESS: I asked him in the lunch room if there was going to be any to wear.

TRIAL EXAMINER: He told you they were in the office and Mr. Guy Caldwell gave them to you?



THE WITNESS: Yes.

\* \* \* \* \*

# HUDIE GOLDEN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

295 Q. Mr. Golden, could you state whether Mr. Seal was active on behalf of the A.B.C. Union? A. Well, yes, I would say yes.

Q. Calling your attention to December of 1964, to your knowledge, was Mr. Seal active in that period in the plant? A. No, I wouldn't say so, it was just talk, but I wouldn't say he was active.

Q. Did you ever have a conversation with any company official about Paul Seal? A. No, not particularly, no.

Q. Did you ever talk to Mr. Kenneth Caldwell? A. Well, yes.

Q. And when did you talk to him? A. That was, I'd say, somewhere — about December, somewhere around there.

Q. Would it be early December? A. Yes, about the early part of December.

\* \* \* \* \*

296 Q. Now, how did this conversation start, did you talk to Mr. Caldwell or did he talk to you? A. The idea was, when I came in he was cooking and I relieved him. The chips were awful brown and I made a crack what was wrong with the chips, why were they so brown.

Q. What did Mr. Caldwell say? A. He said, "Well, what I need is another cook," just like that. He laughed it off and went on. In the meantime, why, Paul Seal was gone and he came back.

Q. Who was he, Mr. Caldwell? A. Yes. He said — he gave me a compliment and said they were looking a little bit better. I laughed it off as a joke. He said, "Well, I tell you what. What we need is a cook, we should run him off."

Q. What did he say, was he referring to Mr. Seal? A. Yes.

Q. What did he say? A. He said, "I would fire him but I don't have any reason to fire him."

\* \* \* \* \*

297 Q. (By Mr. Bruckner) Could you state whether or not you ever heard employees talking about the A.B.C. Union on your shift during December? A. Yes.

Q. Did you ever hear Miss Richardson talking about the A.B.C. Union? A. Yes.

Q. On one occasion or more than one occasion? A. Oh, probably a couple of occasions, between me and her.

\* \* \* \* \*

299

# PAUL SEAL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

300 Q. During your employment at Guy's, were you aware of efforts of Guy's employees in Wichita to join with another union? A. Yes, sir.

Q. And what union was it? A. American Bakery and Confectionery Workers.

Q. Were you personally involved in this effort, sir? A. Yes, sir.

Q. And to your knowledge, when did this effort begin? A. About the last part of November.

TRIAL EXAMINER: 1964?

THE WITNESS: 1964.

Q. (By Mr. Bruckner) Could you tell us how this effort happened to begin, to your knowledge? A. I talked to a couple of representatives  
301 and I found out they could give us better backing than what we had so I passed out cards.

Q. Did you ever attend any meetings of Guy's employees with A.B.C. Union officials? A. Yes, sir.

Q. One meeting or more than one meeting? A. More than one.

Q. And when did the first meeting occur, to your knowledge?

A. Right before Thanksgiving.

Q. And where was this meeting held? A. At the [Allis] Hotel.

Q. Now, did the A.B.C. call this meeting? A. No, sir, the Association of Packers and Drivers did.

Q. Did you have anything to do with the arrangements for the meeting? A. Yes, sir.

\* \* \* \* \*

302 (The questions and answers were read as follows:

\* \* \* \* \*

'Q. Now, did the A.B.C. call this meeting? A. No, sir, the Association of Packers and Drivers did.'")

Q. (By Mr. Bruckner) To your knowledge, had A.B.C. representatives been invited to this meeting? A. Yes, sir.

Q. Are you acquainted with Mr. Kenneth Caldwell, Sr.? A. Yes, sir.

Q. Are you acquainted with Mr. Doyle Alexander? A. Yes, sir.

Q. Are you acquainted with Leotis Rolfe? A. Yes, sir.

Q. Did you ever have a conversation with any company official about the arrangements for this first meeting? A. Yes.

Q. Who was the company official you talked to? A. Kenneth Caldwell, Sr.

Q. Did you talk to him before or after the meeting? A. Before and after.

Q. How many times did you talk to him before the meeting?

A. Twice that I know of.

303 Q. Do you remember the first time you talked to him, sir? A. It was a couple of days before.

TRIAL EXAMINER: Before the meeting?

THE WITNESS: Before the meeting.

MR. WILLARD: May I inquire into the relevancy of this? I don't understand what issue it is going to.

MR. BRUCKNER: If the Trial Examiner will give me a minute, I think I can clear it up.

TRIAL EXAMINER: What issue of the complaint is this testimony directed to?

MR. BRUCKNER: Quite frankly, I think it goes to the issue of company knowledge regarding Mrs. Richardson's discharge.

MR. WILLARD: We knew she was discharged.

TRIAL EXAMINER: Company knowledge of union activities. Go ahead.

Q. (By Mr. Bruckner) We are talking about the first conversation you had with Mr. Caldwell. What was said on this occasion. A. I asked him if Tuesday night would be a good night to have a union meeting. It was in the fall and we were running pretty slow and he said yes. That was the first time. Then I went back down there to the plant the evening of the union meeting to see if he was going to let them off.

Q. Did you talk to him on this occasion? A. Yes, I did.

304 Q. What was said on this occasion? A. He told me that they had to run some more merchandise, that they needed it, and that they posted a bulletin on the board asking which people wanted to go to the union meeting and which ones wanted to stay and work.

Q. I hand you what has been marked for identification as General —

MR. BRUCKNER: May I have this marked for identification as General Counsel's Exhibit No. 13.

(The document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

Q. (By Mr. Bruckner) Mr. Seal, in the Wichita plant where are notices to the employees posted? A. On the bulletin board, in the lounges and by the time clock.

Q. Handing you what has been marked for identification as General Counsel's Exhibit No. 13 purporting to be a notice to night-shift employees, I ask you to state whether or not you have ever seen that before. A. Yes, sir.

Q. Now, where did you see this notice? A. On the bulletin board in the lounge.

Q. When did you see it? A. The night of the union meeting, the evening.

Q. How did this notice come into your possession? A. I took it off the board.

305 Q. When did you take it off the board? A. The next morning.

MR. BRUCKNER: Counsel for General Counsel offers General Counsel's Exhibit 13.

MR. WILLARD: I do not question the authenticity of this document as a notice posted on the bulletin board. I object to it on the basis it is not relevant. As a matter of fact, the witness testified it was a Packers and Drivers meeting.

TRIAL EXAMINER: Counsel says he will connect it.

MR. BRUCKNER: I think I can, if you would like to reserve your ruling.

TRIAL EXAMINER: I will receive the exhibit subject to connection. If it is not connected, you may move to reject the exhibit.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 13, was received in evidence.)

Q. (By Mr. Bruckner) Calling your attention to the signatures on this notice, are you acquainted with the second signature in the right-hand column? A. Yes, sir.

Q. Now, whose signature is that? A. Ina Fay Richardson's.

Q. You said you had a conversation with Mr. Caldwell after the meeting. When did this conversation take place? A. The next day.

Q. And where did the conversation take place? A. By the cooker.

306 Q. Who was present at this time? A. I don't remember.

Q. Besides you and Mr. Caldwell? A. Just Mr. Caldwell to my knowledge.

Q. And who started the conversation? A. Kenneth Caldwell.

Q. And what was said on this occasion by you and by Mr. Caldwell,



if anything? A. He told me if I had been a half a man I would have told him what the union meeting was going to be about and I had no reply.

\* \* \* \* \*

307 Q. (By Mr. Bruckner) Calling your attention again to your first conversation with Mr. Caldwell about the union meeting, before the union meeting, can you tell us the exact words you used, to the best of your recollection, in this conversation? A. You mean the first time I spoke to him?

Q. Yes, sir. A. I just asked if Tuesday would be a good day to have a union meeting, that evening.

TRIAL EXAMINER: Did you mention anything about which union was going to have a meeting or what union was going to have a meeting?

THE WITNESS: Not specifically, no.

Q. (By Mr. Bruckner) To your knowledge, Mr. Seal, did any other of Guy's employees, other than yourself, work for the A.B.C. Union?

A. Yes, sir.

Q. Are you acquainted with Miss Ina Fay Richardson? A. Yes, sir.

Q. Would you state whether or not she worked for the A.B.C. Union? A. She did.

MR. WILLARD: I object and move that be stricken as a conclusion unless counsel intends to follow it up with facts.

Q. (By Mr. Bruckner) To your knowledge, would you please tell us what you observed Mrs. Richardson doing, if anything?

TRIAL EXAMINER: In connection with her union activities?

308 Q. (By Mr. Bruckner) In connection with her union activities. A. There were a lot of people I couldn't see and talk to since I got off work at 1:00 and she came to work at 1:30. I asked her if she would have the people — if they wanted to sign the cards.

TRIAL EXAMINER: You gave her cards for that purpose?

THE WITNESS: Yes.

TRIAL EXAMINER: Did she return any cards to you signed?

THE WITNESS: Yes, sir.

Q. (By Mr. Bruckner) Now, Mr. Seal, did you ever have any conversation with any company officials about the A.B.C. Union? A. Yes, sir.

Q. On one occasion or more than one occasion? A. More than one.

Q. Let's take the first occasion you can recall. Who did you talk to at that time? A. Doyle Alexander.

Q. And where did this conversation take place? A. Outside the lounge.

Q. This is the lounge at the plant? A. Yes, sir.

Q. And what time of day did this conversation take place? A. About 4:00 o'clock in the afternoon.

Q. How did you happen to be there at 4:00 o'clock in the afternoon?

309 A. I came back up to see how Ina Fay was doing with the cards and talk to the people.

Q. And was anyone else present besides you and Mr. Alexander, to the best of your recollection? A. Not that I remember.

MR. WILLARD: Objection to his continuing with this until he tells us when this took place.

Q. (By Mr. Bruckner) Could you tell us when the conversation took place, to the best of your recollection? A. About the middle of December.

Q. Now, what was said by you and by Mr. Alexander, if anything, on this occasion? A. Well, I was talking to him outside the lounge. He told me, "You know, Paul, if you get a new union in, you are going to get a big raise." I told him the people didn't want the raise, they just wanted better backing.

Q. What, if anything, else was said? A. I told him the Association of Packers and Drivers didn't have any backing whatsoever.

\* \* \* \* \*

Q. You said there was more than one occasion when you talked to

company officials about the union. When was the next occasion you can recall? A. A couple of days after that.

310 Q. This would be the middle of December sometime? A. Yes.

Q. Who did you talk to on this occasion? A. Leotis Rolfe.

\* \* \* \* \*

Q. (By Mr. Bruckner) Who was present at this conversation?

A. Eloise Huff, Inez Echols, Fay Richardson and Hudie Golden.

Q. Where did this conversation take place? A. In the lounge.

311 Q. Now, approximately what time of day was this? A. In the afternoon sometime.

Q. How did you happen to be there that afternoon, sir, if you can recall? A. I don't think I had gone home from work yet.

Q. And what was said on this occasion, if anything, sir? A. Oh, all I can remember she was saying something to me about this union better not cause us to lose our Christmas bonus.

Q. Was she talking to you or the whole group? A. She was talking to the group of us.

\* \* \* \* \*

Q. (By Mr. Bruckner) Did you testify in a National Labor Relations Board representation proceeding? A. Yes, sir.

312 Q. And about when was that proceeding held? A. In January, I believe.

Q. Did you say the 15th? A. In January.

Q. Did you ever talk to a company official in connection with your testifying in this proceeding? A. Yes, sir.

Q. And who did you talk to? A. Kenneth Caldwell, Sr.

Q. And when did you talk to him? A. The night before the 15th, the 14th.

Q. This would be the 14th of January? A. Yes.

Q. Where did you talk to him? A. In his home.

Q. And about what time of day was this, sir? A. It was about 11:00 o'clock at night.

Q. And how did you happen to be there at that time? A. He wanted to see a subpoena that I had gotten to go to Kansas City for the hearing.

\* \* \* \* \*

313 Q. (By Mr. Bruckner) When did you find out Miss Richardson was  
314 discharged by the company? A. About the 31st of December.

Q. Did you have any conversation with any company official about this discharge? A. Yes, sir.

Q. Would you state whether or not you talked to this company official in your capacity as an individual employee or as a shop steward?

A. As a shop steward.

Q. And who did you talk to? A. Kenneth Caldwell, Sr.

Q. Where did you talk to him? A. In his office.

Q. I believe you said this was the 31st of December? A. Yes.

Q. About what time of day was it? A. About 1:30, 2:00 o'clock.

Q. And how did you happen to be in his office on this occasion?

A. I had come in that morning, Tommy Robinson had told me that Fay had got fired the night before and she wanted me to call her, so I called her and I asked her to come down to the plant and we went in the lounge and talked the thing over, and she told me —

TRIAL EXAMINER (interrupting): Don't tell us what she told you. You discussed the situation with her?

315 THE WITNESS: Yes.

THE WITNESS (Continuing): Then I went in the office to discuss it with Red, Kenneth Caldwell.

Q. (By Mr. Bruckner) What was said by you and what was said by Mr. Caldwell? A. I went in the office and asked Red what about Fay's discharge and he said — he told me that he was tired of messing with her. She kept coming sick all the time and she wasn't doing her work, and I told him that they couldn't fire a girl because she was sick and he said, "The hell I can't."

Q. What else was said, if anything? A. And I — that is about all I remember.

Q. Do you recall anything being said about Miss Richardson working overtime? A. Yes. She had already worked 8 hours and 15 minutes.

MR. WILLARD: I am going to object to what she may have done.

TRIAL EXAMINER: What is the relevance of this?

MR. BRUCKNER: This is what he told Mr. Caldwell.

THE WITNESS: She had worked 8 hours and 15 minutes.

TRIAL EXAMINER: You told Mr. Caldwell this?

THE WITNESS: Yes. And to work overtime they are supposed to be asked and she wasn't asked to work overtime.

Q. (By Mr. Bruckner) Did you tell Mr. Caldwell that? A. Yes.

\*

\*

\*

\*

\*

317

# CROSS-EXAMINATION

BY MR. WILLARD:

\*

\*

\*

\*

\*

321

Q. Staying with Richardson for a while, in December you first learned of her discharge on the 31st? A. Yes.

Q. And you talked to her about her discharge? A. Yes.

Q. You then talked to Kenneth Caldwell, Sr. about her discharge?

A. Yes.

Q. At that time what was your position with the Packers and Drivers Union? A. I was still president — I was senior shop steward.

Q. You were senior shop steward. When did you become senior shop steward? A. About a week or two before that. We had an election.

Q. Now, earlier you testified that in 1964 you were vice president of the local and shop steward. A. Up until the latter part of December.

322

Q. And then you became senior shop steward? A. Yes, sir.

Q. And vice president of the local? A. Vice president of the national.

Q. On December 31, you were a senior shop steward? A. Yes, sir.

Q. Who were the other shop stewards? A. Ina Fay Richardson, Francis Doolin.

Q. Did you have a copy of the currently effective collective



bargaining agreement between Guy's and the Association of Packers and Drivers? A. Not that I know of.

Q. You were a national vice president and you did not have a copy of the contract? A. Of the old contract, yes.

Q. The contract that was in effect then? A. Yes.

Q. You were discussing the discharge with Mr. Caldwell, Sr. and were referring to that contract? A. Yes, sir.

Q. You were familiar with the contract? A. Yes, sir.

Q. Did you file a grievance over Miss Richardson's discharge?  
A. No, sir.

\* \* \* \* \*

326 Q. Why don't you repeat that small conversation? A. He asked  
me how I got mixed up in this business and I told him that two representa-  
tives came by and talked to me. He asked me if I knew what the word "no"  
327 meant, he said, "Evidently you don't." He said, "You know if this union  
don't go through you are not going to work for me no more." I said, "I  
was looking for a job when I found this one."

\* \* \* \* \*

329

# DOROTHY DRAPER

was called as a witness by and on behalf of the General Counsel and, hav-  
ing been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

330 Q. Could you state whether or not you wore any signs supporting  
either the Association or the A.B.C. prior to the election? A. I wore  
one for Drivers and Packers.

TRIAL EXAMINER: How long before the election did you wear it?

THE WITNESS: The day before the election.

TRIAL EXAMINER: You got it the day before the election?

331

THE WITNESS: Yes.

TRIAL EXAMINER: Who did you get it from?

THE WITNESS: Pamela Addis.

Q. (By Mr. Bruckner) To your knowledge, were a lot of employees wearing Packers and Drivers Union signs that day? A. To my knowledge, all that I saw were wearing them.

\* \* \* \* \*

Q. (By Mr. Bruckner) Are you acquainted with Helen Fraley?

A. Yes.

Q. Are you acquainted with Kenneth Caldwell, Jr.? A. Yes.

332 Q. Did you have a conversation with any company official about the Packers and Drivers signs? A. Well, no more than when I saw Helen Fraley with hers on I asked her why she was wearing it.

Q. When did you see her with the sign on? A. The day before the election.

Q. Where were you at the time? A. I was boxing at the machine.

Q. What did you say to Mrs. Fraley on this occasion and what did she say to you? A. I asked her why she was wearing that sign, that she didn't belong to a union. She said she could wear it. I told her no, she couldn't because she wasn't a union member. She told me that Mr. Caldwell told her she could.

\* \* \* \* \*

THE WITNESS (Continuing): That she could wear the sign. About that time Kenneth Jr. came by.

Q. (By Mr. Bruckner) Kenneth Caldwell, Jr.? A. Yes.

Q. What was said after he came by? A. She asked him couldn't she wear it and he said yes, and I said, "Junior, you know she can't wear the sign," and he asked me why was I wearing a Drivers and Packers sign and I asked him where was his and that is all that was said.

MR. WILLARD: May I have the whole answer read back?

333 (The answer was read as follows:

"A. I asked her why she was wearing that sign, that she didn't belong to a union. She said she could wear it. I told her no, she couldn't because she wasn't a union member. She told me that Mr. Caldwell told

her she could. That she could wear the sign. About that time Kenneth, Jr. came by. She asked him couldn't she wear it and he said yes, and I said, 'Junior, you know she can't wear the sign,' and he asked me why was I wearing a Drivers and Packers sign and I asked him where his was and that is all that was said.")

MR. WILLARD: I move to strike that portion of the answer relating what Guy Caldwell may have said to some person other than this witness as hearsay.

TRIAL EXAMINER: It is a statement made by a supervisor. Sustained.

MR. WILLARD: As to the truth of whether Mr. Caldwell said it.

MR. BRUCKNER: As to what the supervisor said to her.

TRIAL EXAMINER: That is what it is admitted for.

Q. (By Mr. Bruckner) Other than Helen Fraley, did you observe any other company supervisors wearing signs that day? A. Later on in the day I saw Junior with one on, Kenneth Caldwell, Jr.

\* \* \* \* \*

334

ROBERT EUGENE TIBBITS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

335

Q. Directing your attention to May 5, 1965, did you vote in the election on that date? A. Yes, I did.

Q. And are you acquainted with Kenneth Caldwell, Sr.? A. Yes, I am.

Q. Are you acquainted with Kenneth Caldwell, Jr.? A. Yes.

Q. Are you acquainted with Helen Fraley? A. Yes, I am.

Q. Were you aware of employees wearing Packers and Drivers signs before the representation election? A. Yes.

Q. Did you ever have a conversation with any company official  
336 about these signs? A. Yes.

Q. On one occasion or more than one occasion? A. I think it was  
just once, I might be mistaken.

Q. And who did you talk to on this occasion? A. Kenneth Caldwell, Jr.

Q. And where did this conversation take place? A. In the plant.

Q. And what day was this? A. The day before the election.

Q. About what time of day was it? A. It was in the morning, I  
guess it would be about 9:00.

Q. About how long was this conversation? A. About 5 or 6 minutes.

Q. Who started it? A. I just saw everyone was wearing them  
signs and I just wanted to know where they come from. I said, "I just  
got to have one," like that, kidding, joking.

TRIAL EXAMINER: Who did you say that to?

THE WITNESS: Kenneth Caldwell.

Q. (By Mr. Bruckner) What did he say to you? A. He told me  
where I could get one.

Q. What happened after that? A. I didn't really want one, I was  
kidding. He told me where I could get some and he tried —

337 MR. WILLARD (interrupting): I object to that.

TRIAL EXAMINER: Tell us what he said.

THE WITNESS: I said, "I have to have one," and he said — he told  
me to go to Pam and get one.

TRIAL EXAMINER: Did he tell you that once or more than once?

THE WITNESS: We just joked around and then he told me who all  
he — for me to get several and for me to pass them out, but I wouldn't go  
get any.

Q. (By Mr. Bruckner) Did you wear a union sign that day? A. That  
afternoon I did.

Q. And what sign did you wear? A. I wore a Packers and Drivers  
and I also wore an A.B.C. that morning.

Q. How did you happen to wear the Packers and Drivers sign?

A. Well, there is two different times, I take it back. After dinner Kenneth Caldwell, Jr. pinned two on my back when I was wearing an A.B.C. sign.

Q. Was this after the first conversation? A. Yes.

Q. When was the next occasion? A. Later in the day. I wondered how come everybody had them on so they told me so they wouldn't know which way you voted so I got a Packers and Drivers sign then.

Q. Did you see any supervisors wearing Packers and Drivers  
338 signs? A. Yes.

Q. On May 4? A. Yes.

Q. What supervisors did you see wearing Packers and Drivers  
signs? A. Leotis Rolfe and Helen Fraley and Kenneth Caldwell, Jr.

\* \* \* \* \*

343

INA FAY RICHARDSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. BRUCKNER:

Q. Would you please state your name and address for the record.

A. Ina Fay Richardson, 2025 North Mosley.

Q. Are you now or have you ever been employed by Guy's Foods, Inc.? A. Yes, I have been employed.

Q. And were you employed at the Wichita plant? A. Yes.

Q. For how long? A. Nineteen months.

Q. About when did your employment begin? A. May the 10th, 1963.

Q. When did your employment end? A. December 30, 1964.

Q. And what was your job while you were employed there? A. A machine girl.

344

Q. And how was your employment ended? A. I was fired.

Q. While working at Guy's, were you a member of a union? A. Yes.



Q. And what union? A. Drivers and Packers Association.

Q. Did you ever hold an office in that union? A. Yes.

Q. What office? A. Shop stewardess.

Q. How long did you hold that office before your discharge? A. A month.

Q. During the time you were employed by Guy's, did you become aware of an effort of the employees to join with another union? A. Yes.

Q. And what union was that? A. The American Bakery and Confectionery Workers.

Q. Did you ever attend any A.B.C. meetings prior to your discharge? A. Yes.

Q. About when was the first meeting you attended with A.B.C. representatives? A. The last Tuesday of November.

Q. Were you released from work to attend that meeting? A. Yes.

345 Q. I hand you what has been marked for identification as General Counsel's Exhibit 13 and ask you if that is your signature that appears thereon. A. Yes.

TRIAL EXAMINER: This exhibit is in evidence. It is not for identification.

MR. BRUCKNER: May the record be so corrected.

Q. (By Mr. Bruckner) Are you acquainted with Kenneth Caldwell, Sr.? A. Yes.

Q. Are you acquainted with Doyle Alexander? A. Yes.

Q. Are you acquainted with Leotis Rolfe? A. Yes.

Q. Did you ever have conversations with any company officials about the A.B.C. Union? A. Yes.

Q. On one occasion or more than one occasion? A. More than one.

Q. Let's take the first occasion. About when did it occur? A. In the middle part of December on my first break which would have been about 4:00 o'clock in the evening.

Q. Did you have more than one conversation this day? A. Yes.

346 Q. And calling your attention to the first one, who did you talk to? A. Leotis Rolfe.

Q. And who else was present, if anyone? A. Imogene Davis, Eloise Huff, Paul Seal and Hudie Golden.

Q. Where did this conversation take place, in the lunch room?

A. Yes.

Q. Would you relate what was said at that time. A. The discussion was over the Christmas bonus, and Leotis said she didn't want her Christmas bonus taken away. And in reply I said, "The Christmas bonus didn't mean that much to me."

Q. When was the next conversation? A. Later on in the evening when —

Q. (Interrupting) Who did you talk to at this time? A. Doyle and Leotis.

Q. Doyle Alexander? A. Yes.

Q. Was anyone present during this conversation? A. Yes, Hudie Golden.

Q. Did everyone stay the entire conversation? A. No. Leotis Rolfe left to go tie boxes.

Q. After about how long? A. After about 10 minutes of the discussion.

Q. After she left, how long did the discussion continue with Mr. Alexander? A. About 20 minutes.

347 Q. Now, did Mr. Golden stay the entire conversation? A. No, he soon left.

Q. Will you relate what was said on this occasion to the best of your knowledge? A. Well, we were talking about the AFL-CIO and concerning my part in it, for one thing, and the other was over the Christmas bonus. Doyle was going to use his Christmas bonus to adjust his cards, he asked me if I actually thought the CIO could help me and I said yes and I explained why I thought it could help me. I told him the way it was told to us in the meeting that Kenneth Caldwell, Sr. was making so much money off of each head and we were actually paying for our Christmas bonuses. And I believe that is about all that I can recall.

Q. Do you recall anything said about working conditions? A. Yes.

MR. WILLARD: I object to the leading form.

MR. BRUCKNER: The witness has exhausted —

TRIAL EXAMINER: She may answer.

THE WITNESS: I told Doyle we weren't wanting a raise, all we were wanting was better working conditions among the employees and the employer.

Q. (By Mr. Bruckner) Were you more specific, did you tell him what you meant by that? A. Oh, yes. On night shift we don't get very many hours in and the night girls would want to try to get at least 40 hours in.

348 Q. Can you recall any other occasion that you talked to any company official? A. Yes.

Q. When was that? A. That was still in the middle part of December before the Christmas holidays, it was during while we were working inside of the plant.

Q. Who did you talk to? A. Leotis Rolfe.

Q. And what was said by you and what was said — first, was anyone present on this occasion? A. Yes.

Q. Were you working? A. Yes.

Q. About what time of day was it? A. It was right after we came to work, I would say about 3:00.

Q. And what was said by you and what was said by Leotis Rolfe? A. In reply I didn't say anything because the way it was she came up to our machines and said that we should have went in to Red if we wanted a raise instead of bringing in another union.

Q. Is this all you can recall of this conversation? A. Yes.

Q. Can you recall any other conversations with company officials? A. No.

Q. Now, did you work for the A.B.C. Union? A. Yes.

349 Q. And what, if anything, did you do? A. Well, I talked to all the girls and most of the girls were hard for Paul to see and I talked to them.

Q. Did you talk to them at the plant? A. Inside the plant, yes.

Q. Did you talk to them on just one occasion or more than one occasion? A. Every day.

Q. How many girls were on your shift? A. Nine girls.

\* \* \* \* \*

Q. Now, calling your attention to December 30, who discharged you? A. Kenneth Caldwell, Sr.

351 Q. What time of day did this occur? A. About 11:55 p.m.

Q. How many hours did you work that day? A. Eight hours and 15 minutes, so it was 15 until 11.

Q. So then you mean 10:15?

MR. WILLARD: Don't lead the witness.

TRIAL EXAMINER: This is immaterial. Go ahead.

Q. (By Mr. Bruckner) You mean 10:15? A. Yes.

Q. You said you worked 8 hours and 15 minutes that day? A. Yes.

Q. And had you clocked out? A. Yes.

Q. And where were you at the time you talked to Mr. Caldwell?

A. In the lunch room.

Q. How did you happen to be in there at that time? A. Because I had clocked out and I wasn't feeling well and I was sitting in there waiting on two girls that ride home with me.

Q. Was anyone else present during this time? A. Yes.

Q. Who was present? A. Linda Long and Dale Weaver.

Q. Who is Dale Weaver? A. He is the husband of an employee.

352 Q. And what is her name? A. Pat Weaver.

Q. Who is Linda Long? A. She was an employee.

Q. Is either — to your knowledge, is either Linda Long or Pat Weaver with the company at this time? A. No.

Q. What was said by you and what was said by Mr. Kenneth Caldwell, Sr.? A. He walked in and asked me what I was doing sitting on my

butt, I said, "I wasn't feeling well." He said, "If you are not feeling well, do not come back the next day," and I said "O.K." In a few minutes he came back in and said "Well, I am sick of fooling with you and don't come back to work no more," and I said Red, "Why do you want to do me like this?" and he just said, "I am sick of fooling with you," and walked out.

Q. Now, prior to your discharge, had you been sick? A. The day before, yes.

Q. And had you worked that day? A. Yes.

Q. And how long had you worked that day? A. About three hours.

MR. WILLARD: Objection on the relevancy.

TRIAL EXAMINER: It may stand.

Q. (By Mr. Bruckner) Did you receive permission to clock out  
353 after three hours to go home? A. Yes.

Q. Did you return to work the next day? A. Yes, I did.

Q. Did you have a conversation with Mr. Caldwell when you returned to work? A. Yes, I did.

Q. What was said that morning? A. That afternoon when I came in he said, "Hello there, Flash. How are you feeling today?"

Q. Is that a nickname? A. Yes.

Q. Now, prior to your discharge, had Mr. Caldwell ever criticized your work? A. No, but — no.

Q. Had you ever had a meeting with Mr. Caldwell about your work?  
A. Yes, I was called into the office once.

Q. About when was this? A. I'd say about the middle part of the summer, the latter part of the summer.

Q. In '64? A. Yes.

Were you in court today when Paul Seal testified? A. Yes.

354 Q. Was this before or after you filed your grievance with Mr. Seal?

A. It was after I had filed a grievance with Mr. Seal.

Q. About how long after? A. The next day.

Q. And what was said by you and what was said by Mr. Caldwell?



A. When I came in the office he said what was I trying to do, run the plant? I told him no. He said what was I trying to do, be a floor lady, and I told him no. He said every time he turned around he was having complaints about me trying to tell the supervisor what to do, and I told him, I said, "Well, Red, that is not true," and so he switched over from that subject to another subject, talking about me throwing a potato and hitting a lady with it. I told him, "I wasn't aware of me hitting no lady with a potato," and he said, "I have known that lady longer than I have known you," and so I told him that if I had hit her with a potato that I was not aware of it. And so I told Red that he knows, that I know that he wants bags and things picked off the floor and I told him that I did do my part and he said, "as far as I am concerned, your work is fine and you can go back to work."

Q. Now, just a couple of more questions. About this potato incident. To your knowledge, was this lady still working with the company?

A. No.

355 Q. When —

TRIAL EXAMINER (interrupting): You mean at the time of that conversation?

THE WITNESS: No, she wasn't working there.

Q. (By Mr. Bruckner) To your knowledge, approximately when did her employment end with the company? A. She quit about two or three months before I was called in about that.

Q. Did you ever have a job in the company where you had to toss potatoes off the line or anything? A. That is the way we have always been doing it until it was switched to have a girl on the side digging down, spotting the rotten potatoes.

Q. Is it your testimony you picked up a rotten potato? A. And pitched them in a big, old dingy deal.

\*

\*

\*

\*

\*

## CROSS-EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

358 Q. Directing your attention to the conversation you had with Kenneth Caldwell, Sr. the evening of December 30, after you had clocked out and you saw him in the lunch room, could you tell us again what he said? A. He came in and asked me what was I doing sitting on my butt. I told him I was not feeling well, and he said that if you are not feeling well tomorrow, do not come to work, and I told him O.K., and so he left.

Q. Did he say anything else about your illnesses? A. Something about me — I am taking aspirins and I am just sick in my head.

Q. I would like to read from your statement. He said, 'It is all in your mind, you are always taking aspirin,' and that I didn't want to work anyway. A. Yes, but I went to the doctor the next day we —

Q. (Interrupting) Then he left the lunch room? A. Yes.

Q. Were Huff and Davis still working when you clocked out? A. Yes.

Q. Had you had a conversation earlier in the day with Leotis Rolfe about your not feeling well? A. No, not that day, no.

Q. Had you asked to be assigned to another job? A. No.

359 Q. On December the 30th? A. No.

Q. You didn't have any conversation about not feeling well? A. Not to her, no.

Q. Did you have it with Kenneth Caldwell, Sr. A. No.

Q. What work was your crew doing at the time you checked out? A. Production time was over and we were cleaning up.

Q. Is it customary to clean the machines every night? A. Yes.

\* \* \* \* \*

Q. (By Mr. Willard) What lady did you think Mr. Caldwell was accusing you of throwing potatoes at? A. Cora Smith.

Q. When do you place this conversation about throwing potatoes?

A. I still say the mid-part of the summer, or the latter part of the summer.

Q. You say this was right after you had filed a grievance with the company about segregation? A. Yes.

\* \* \* \* \*

362 Q. Then after this conversation in mid-summer about potatoes, you are sure this lady quit before Red talked to her? A. Yes.

\* \* \* \* \*

Q. (By Mr. Willard) After this conversation of mid-summer, did Mr. Caldwell, Sr. talk to you one evening near the first part of September when you were near your work station, did he reprimand you at any time during the early part of September? A. No, because I was on my vacation then.

Q. Do you recall an occasion, sometime between this conversation that you have related and, say, September the 30th, when you heard a very, very funny story told by another employee? A. What kind of a funny story? I am not understanding what you are talking about.

363 Q. Eddy Fields was the employee. Did you ever talk to him?  
A. Yes.

Q. Does he tell funny stories sometimes? A. Normally, yes.

Q. Do you recall the story that he told and you thought was very funny and Mr. Caldwell, Sr. came out and asked you what you were doing? A. No, I don't recall that, no.

Q. You don't recall that at all? A. No. He has never said anything to me about talking to Eddy that I can remember.

TRIAL EXAMINER: What was your reason for firing this employee?

MR. WILLARD: Our reason for firing Miss Richardson is that she clocked out before the work was done.

TRIAL EXAMINER: On December 30?

MR. WILLARD: On December 30. However, we are not saying

that we would have fired her if that had been the first occasion that Mr. Caldwell had found her doing something he regarded as improper.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Willard) You have already told us the whole conversation between you and Mr. Caldwell, Sr. on December 30? A. Yes.

\* \* \* \* \*

365

## JOHN PEQUES

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

Q. And where are you employed? A. Guy's Foods.

Q. How long have you been employed there? A. A little over a year.

Q. And what is your job? A. Unloading spuds and cleanup.

Q. What shift do you work on? A. Night shift.

Q. Are you a member of a union? A. Yes.

Q. What union? A. Packers and Drivers.

Q. Now, while working at Guy's did you know of efforts of Guy's employees to join with another union? A. Yes.

366 Q. What union was that? A. ABC.

Q. Are you acquainted with Doyle Alexander? A. Yes.

Q. Are you acquainted with Leotis Rolfe? A. Yes.

Q. Now, did you on any occasion ever have a conversation with any company official about the ABC union? A. You mean —

Q. (Interrupting) Did you ever talk to any company official about the ABC union? A. Yes.

Q. On one occasion or more than one occasion? A. More than one occasion.

Q. Let's take the first occasion you can remember; who talked to you? A. It was Doyle Alexander.

Q. When did this conversation occur? A. I'd say it was about the middle of December, or the last of December.

Q. Well, the middle or the last, can you place it a little more specifically? A. I'd say about the middle.

367 Q. Now, where did you talk to Mr. Alexander? A. It was in the back of the plant, in the warehouse.

Q. Is this where you work? A. Yes.

Q. Who started the conversation? A. Doyle Alexander.

Q. About how long did it last? A. About 10 minutes or so.

Q. And what do you recall was said by you and by Mr. Alexander, if anything, on this occasion? A. He asked me if I signed those cards for the ABC and I told him "Yes," and he said that the ones that signed them were not going to receive their Christmas bonus.

Q. Do you recall anything else that was said? A. Once in a meeting, about the first ABC meeting.

Q. Is this another conversation? A. Yes.

Q. Who did you talk to this time? A. Doyle Alexander, also.

Q. When did this conversation occur? A. It was after one of the ABC meetings.

Q. In the middle of December, was it before Christmas? A. I can't quite remember.

Q. Was it in December? A. I'd say it was.

368 Q. Was it the first part of December or the middle part of December? A. I'd say about the first of December.

Q. And where did this conversation take place? A. It was back in the warehouse.

Q. And who started this conversation? A. Doyle Alexander.

Q. About how long was it, if you can remember, John? A. You mean —

Q. (Interrupting) How long was the conversation? A. About 5 or 10 minutes, something like that.

Q. What was said by you and what was said by Mr. Alexander, if



anything? A. He asked me what was the meeting about the following night. I told him I didn't think he should know.

TRIAL EXAMINER: Had this meeting already been held?

THE WITNESS: Yes.

TRIAL EXAMINER: Did he say the meeting the "following night" or the "previous night"?

THE WITNESS: This was after the meeting.

TRIAL EXAMINER: Your conversation was after the meeting and he asked you what the meeting was about last night?

THE WITNESS: Yes.

Q. (By Mr. Bruckner) And what else, if anything, was said?

A. I can't think of anything else.

\* \* \* \* \*

370

## CROSS-EXAMINATION

BY MR. WILLARD:

Q. When you talked to Doyle Alexander sometime in the middle of December and talked about Christmas bonus, you testified he said those who signed ABC cards would not get a Christmas bonus; could it have been while you were talking he said because of the union and the cards no one was going to get a Christmas bonus? Does that version sound more like what you would like to testify to? A. Yes.

Q. Your previous testimony was incorrect on that point? A. Yes.

\* \* \* \* \*

371

## CHARLES THOMPSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

\* \* \* \* \*

Q. And where are you employed? A. Guy's Foods, Inc.

Q. And how long have you been employed there? A. Two years.

Q. And what is your job, sir? A. Cook.

Q. Are you a member of a union? A. Yes, I am.

Q. What union is that? A. Packers and Drivers Union.

Q. Do you hold an office in that union? A. Yes.

Q. What office do you hold? A. I'm secretary-treasurer.

Q. Is this of the local? A. Yes.

373 Q. How long have you held that office? A. For about 7 or 8 months.

Q. Now, working at Guy's did you know of efforts of Guy's employees to join another union? A. Yes.

Q. What union was that? A. The ABC.

Q. Are you acquainted with Leotis Rolfe? A. Yes.

Q. Are you acquainted with Doyle Alexander? A. Yes.

Q. Did you ever have a conversation with any company official about the ABC union? A. Yes.

Q. On one occasion or more than one occasion? A. More than one.

Q. Let's take the first occasion you can remember. Who did you talk to? A. Leotis Rolfe.

Q. And when did this conversation take place? A. Around close to Easter.

Q. Where did it take place? A. At the break-room at the plant.

Q. Who was present besides yourself and Leotis? A. No one.

374 Q. What was said by you and what was said by Leotis Rolfe on this occasion? A. Leotis said to me that she thought Guy Caldwell would either sell out or close the plant down if the ABC came in and if it did we would probably lose our overtime, and I had no statement.

Q. Let's take the next occasion you can remember, when did that occur? A. I guess about the last part of April.

Q. Who did you talk to on this occasion? A. Doyle Alexander.

Q. And where did this conversation take place? A. Over by where I work — cook.

Q. And about what time of the day was this? A. I'd say it was about 9:00 o'clock.

Q. A.M. or P.M.? A. P.M.

Q. You work on the night shift? A. I am on the night shift.

Q. Now, was anyone present besides yourself and Mr. Alexander?

A. No.

Q. What was said by you and by Mr. Alexander, if anything, on this? A. Mr. Alexander made a statement that he heard that Guy Caldwell planned to sell out to General Foods, and it was along that line.

Q. What, along that line, can you remember?

TRIAL EXAMINER: Give us his exact language, as near as you can recall it.

A. Well, he said, "I hear that Guy is planning to sell out to General Foods" and he asked me if I knew anything about it. I told him, "No, I don't know," but whatever happened would happen, that is, if ABC came in.

\* \* \* \* \*

Q. (By Mr. Bruckner) Mr. Thompson, would you please try to recall again exactly what Mr. Alexander said on this occasion when he talked to you in late April? A. He said that he had heard that Guy Caldwell would sell out to General Foods if the ABC came in.

Q. When was the next occasion you talked to a company official?

376 A. I guess it was about two weeks later, just before the election. I'm sorry.

Q. And who did you talk to on this occasion? A. Doyle Alexander — no, I'm sorry, Leotis Rolfe.

Q. And where did this conversation take place? A. By the cheese stick machine.

TRIAL EXAMINER: The what?

THE WITNESS: The cheese stick machine.

Q. (By Mr. Bruckner) Who else was present on this occasion besides yourself and Mr. Rolfe, if you can remember? A. Mrs. Anna Hoyt.

Q. Who is she? A. She runs the machine and bags cheese sticks.

Q. Can you tell us what was said on this occasion? A. On that occasion, that's the day we were — just before the election when everyone was wearing the signs.

TRIAL EXAMINER: I thought this was a conversation with Doyle Alexander.

THE WITNESS: No, this is Leotis Rolfe.

Q. (By Mr. Bruckner) Continue. A. I was on my way to get a drink of water and as I passed by her she stopped me and asked me what was I trying to do, "run the company out of business?" I made the statement, "I don't know what you're talking about." She said, "You know what I mean," and she took one of the signs that she had on her and pinned it  
377 on me.

Q. What did this sign say? A. "Vote for Packers and Drivers."

Q. Did you observe any other company supervisors wearing signs before the election? A. Yes.

Q. Who did you see? A. Helen Fraley.

TRIAL EXAMINER: What kind of a sign was she wearing?

THE WITNESS: Association of Packers and Drivers.

\* \* \* \* \*

382

KENNETH CALDWELL, SR.

was called as a witness by and on behalf of the Respondent and, having

383 been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. WILLARD:

\* \* \* \* \*

Q. Is there a Kenneth Caldwell, Jr.? A. Yes, sir.

Q. That is not you? A. No.

Q. What is your present position? A. General manager of the Wichita plant.

Q. Of what company? A. Of Guy's Foods, Wichita, Kansas.

Q. Are you acquainted with Ina Fay Richardson? A. Yes.

Q. Was she employed at Guy's Foods plant at Wichita? A. Yes.

Q. From approximately when to approximately when? A. May of 1963 until December of 1964.

Q. Looking at the year 1964, did you have any occasion to discuss her work or the question of discipline with Miss Richardson, and, if so, about when? A. Yes, I did. Late spring or early summer I had an occasion. An employee came to me and said she was unnecessarily throwing  
384 ing potatoes into a bin and she could possibly get hit with them. This was unnecessary as she could have laid the potatoes down on the belt and it would have conveyed the potatoes into the bin.

Q. You mean Richardson? A. Yes.

Q. Did you take any action? A. Yes, I talked to Ina Fay. She said she didn't realize she was throwing the potatoes where they might hit this lady, and she would see this wouldn't happen again.

Q. Where did you talk to Richardson? A. In my office.

Q. Do you recall -- you said late spring or early summer?

A. Yes.

Q. You have been present throughout the hearing today, is that correct? A. Yes.

Q. You heard Miss Richardson testify about a discussion with you sometime during the summer, mid to late summer, 1964, after I filed a grievance with Paul Seal. You allegedly said to her what was she trying to do, "be a floorlady" or words to that effect. Do you recall such a conversation? A. Yes. It started -- I heard a commotion out in the plant this particular evening. I walked out and Ina Fay was laughing, swinging her arms with a bag of potato chips in each hand. I asked what was going on and she said that Eddy had told her a funny  
385 story and she couldn't help but laugh, but she was interrupting production with everybody standing gawking at her, so I called her in the office on this at this particular time. She said she didn't realize what she was doing.



Q. You talked to her about disrupting production at that time?

A. Disrupting production.

Q. She testified that you accused her of acting like a floorlady.

A. Possibly that could have entered into the conversation.

Q. Now, this potato-throwing incident, we were discussing another employee; what was this other employee's name? A. Cora Jones.

Q. The first time that you talked to Richardson about this was Jones still working? A. She was still working, yes.

Q. Did she eventually quit? A. She came to me and said she couldn't work under those conditions and she felt she had better quit.

Q. Did she say what she meant by the "conditions"?

TRIAL EXAMINER: What's the relevancy?

MR. WILLARD: We are going to the question of what information Mr. Caldwell was relying on as the discharge of Richardson approached. I'm going to show that Mr. Caldwell believed that Richardson was continuing to throw potatoes, that because of that another employee quit.

386 TRIAL EXAMINER: Go ahead.

Q. (By Mr. Willard) Did this other employee, this Cora Jones, tell you what she meant by those "conditions"? A. Well, she said she realized I couldn't do anything about it because when I was out in the plant these things didn't happen, but they were happening, so she just felt that she might just as well quit.

MR. BRUCKNER: I'm going to have to object and ask this answer be stricken on the grounds of hearsay.

TRIAL EXAMINER: It's not being introduced for the truth of it, it's only being introduced that such a complaint was made to Mr. Caldwell and the employee that quit gave that reason for it.

It will stand.

Q. (By Mr. Willard) After the first conversation you then had a second conversation that you testified to? A. Yes.

Q. That arose out of what? A. That arose out of this joke or "funny story" that was supposed to have been told to Ina Fay.

Q. Did you give Miss Richardson any specific warning at that time? A. I told her that time that was the second time I had to talk to  
387 her and that if anything else came up where her work wasn't satisfactory she would definitely be terminated.

TRIAL EXAMINER: When did this lady quit, Mrs. Jones?

THE WITNESS: I can't tell you the actual date, but I would say a month after the first incident.

TRIAL EXAMINER: Was it July or August or June?

THE WITNESS: I would say June.

Q. (By Mr. Willard) After this second warning, or reprimand, to Richardson, did you have any occasion to discuss the Richardson case with representatives of the Packers and Drivers Union? A. To my knowledge, yes, we did. There was a Packers and Drivers meeting called with management to attend. It was officers of the Packers and Drivers, trying — in other words, just a little closer contact as to what the management should do as far as —

Q. (Interrupting) Who was present for the Packers and Drivers Union? A. Mr. Barker, there, was there; Paul Seal was there; Troy Smith; Cloyd Stroud.

Q. Who was there for the company? A. Guy Caldwell and myself; Mr. Art Doyle was there also.

Q. How did the subject of Richardson come up? A. The Packers and Drivers felt that each employee should be notified or talked to when these things come up that aren't right, and I brought up at that meeting  
388 that Ina Fay had already been talked to twice and the next time she had to be called in she would be automatically terminated.

Q. Other than these two occasions have you had one occasion or more when you discussed Richardson's work with her immediate supervisor? A. Yes, the supervisor had come to me.

Q. Who is the supervisor? A. Leotis Rolfe is the floorlady she worked under. She had come to me several times and said that Ina Fay had tried to trade jobs, or did trade jobs, with some of the other girls;

in other words picking her own job in a crew, or even going out in a crew.

Q. Did Leotis talk to you about this on more than one occasion?

A. Yes, she talked to me about this the afternoon that Ina Fay was terminated.

Q. What prompted the discussion between you and Leotis the afternoon of December 30? A. On the afternoon of December 30 Leotis came to me and said Ina Fay was sick -

MR. BRUCKNER: This is hearsay.

TRIAL EXAMINER: It will go in for the limited purpose of showing this witness received a complaint and the nature of it.

A. (Continuing) -- came to me and said that Ina Fay was sick. She said she told Ina Fay if she was sick she should clock-out and go home.

389 Q. (By Mr. Willard) Did Leotis tell you why Richardson told Leotis that she was sick? Do you understand the question? A. No.

Q. Let's go back to what Leotis told you. Leotis came in to tell you about Richardson? A. Yes, and she had asked to put her on a job and Ina Fay asked for another job because she was sick, and Leotis told her if she was sick she should clock-out and go home.

Q. Did she go home? A. No, she didn't. She felt she could work 8 hours.

Q. Is this what Leotis told you on December 30? A. Yes.

Q. And did you leave the plant? A. Yes.

Q. Did you return to the plant? A. I did.

Q. Tell us what transpired when you returned to the plant and what time it was. A. It was somewhere between 10:30 and 11:00.

TRIAL EXAMINER: How long were you away from the plant?

THE WITNESS: Around 7:00 o'clock, in the evening.

A. (Continuing) When I came in to the plant Ina Fay was walking away from the timeclock. She had clocked out. I walked back and checked to see that the two girls that were working with her as a crew, if they were  
390 still working, and they were. I walked in the coffee room and she was sitting there and I asked her why and she said she clocked out. I told

her I knew it because I saw her. I asked her why she clocked out and she said she had been sick. I told her I knew she was sick all afternoon but I felt if she could put in 8 hours and 15 minutes she could go in and put in the rest of the 30 minutes.

Q. (By Mr. Willard) Did you tell her anything about when she should come back to work? A. I did tell her not to come back to work the next day if she was still sick, and I left the room.

Q. What did you do while you were out of the room? A. I stood out in the plant and thought about these other two times that I had to talk to her and I told her she would be terminated on the next one, and I felt to be fair to my other employees that she should be terminated.

Q. What did you do? A. I turned around and went back in and told her we wouldn't need her any more.

Q. Could you recall on any one of these times talking to her and telling her her illness was in her head? A. I can't recall it.

TRIAL EXAMINER: You don't deny you said it?

THE WITNESS: I don't deny I said it.

391 Q. (By Mr. Willard) Do you know if Miss Richardson at that time had any affiliation with any labor union? A. She was a stewardess with the Drivers and Packers.

Q. By that time there had been some union activity? A. Right.

Q. Did you know whether or not she was a member or supporter of the ABC union? A. I had no way of knowing, but if I —

Q. (Interrupting) If you were making a list of supporters would you put her on the list? A. Yes, I would.

Q. More or less active than others on the list? A. I would say the average.

Q. What would you base her information as to her ABC support on? A. Well, more or less talk from other people. Another thing, talking to the other employees on the job, which wasn't common.

\*

\*

\*

\*

\*

392

Q. (By Mr. Willard) Paul Seal asked you to close down the plant

for a union meeting? A. Yes.

393 Q. Did you agree to do it? A. I said, 'It's a bad day'; Monday and Tuesday are usually our heavy days in production. I told him if it was possible I would. The afternoon went on and the employees kept coming and wondering if they could get off to go to this union meeting, so I felt the only way to find out was to find out who wanted to go and who wanted to work, whether I could stay in operation or not, so that is when the sign was posted.

Q. You put the sign up? A. I put the sign up myself for my own information so as to know whether or not I would have any employees left to run the plant.

Q. Did you check the sign to see who had signed their names? A. Later on in the evening I saw it was about 50-50 so I made up my mind if the employees wanted to go up to the meeting I would close it down.

Q. Did you close down early that night? A. Yes.

Q. Do you have any independent recollection of who signed that they wanted to work or who signed that they wanted to go? A. At the present time I could probably pick a few on each side, but as to all of them, I couldn't.

Q. At the time you put the list up and checked it did you know  
394 what the purpose of the meeting was? A. I felt that it was a meeting for the Drivers and Packers.

Q. When did you first learn the ABC had been discussed? A. The next day.

Q. How did you learn this? A. The employees told me.

Q. Is this common for them to tell you what goes on in a union meeting? A. Some that didn't appreciate it were the ones that told me.

Q. Were they accusing you of putting them up to it? A. No.

Q. Did you ever have a conversation with Paul Seal to the effect that if he had been half a man he would have told you what was going on?

A. I don't remember it, but I probably did.



Q. To the best of your knowledge, did the employees in the plant know what the purpose of that meeting was before they attended it? A. I would say 75 per cent of them didn't.

\* \* \* \* \*

Q. (By Mr. Willard) On this question of working over 8 hours, does the night crew have a fixed schedule they work all the time? A. No.

395 Q. Do you give employees who come to work on the night shift any instructions as to their hours? A. When girls are hired, or employees, for the night shift they are told they go home when we get through. A day shift you can run 8 hours and you have a shift come in and relieve them. At night when we get through these machines have to be cleaned. We try to package all of our products each day, so you can't set a time and say, "We are going home at 9:00 o'clock" at night. They are all instructed that we go home when we get through.

\* \* \* \* \*

#### CROSS-EXAMINATION

BY MR. BRUCKNER:

Q. Mr. Caldwell, you said you warned Miss Richardson on two occasions about her work? A. Yes, sir.

396 Q. Now, when were these occasions again? A. One of them was late spring or early summer, I would say perhaps in May; the next one was sometime around the first of September.

Q. And did you say at that time, "I warn you about your work"? A. The second time I told her — it was the second offense — if there was any doubt about her work in the future and she had to be called in the future she would be automatically terminated.

\* \* \* \* \*

397 Q. (By Mr. Bruckner) Now, you say Cora Jones was the girl that brought up the potato incident? A. Yes.

Q. When did Mrs. Jones quit? A. Well, I would say possibly the first of June.

\* \* \* \* \*

398 Q. Were you aware that any of your employees were supporters of the ABC?

MR. WILLARD: At what time?

MR. BRUCKNER: In December of 1964.

THE WITNESS: Yes, sir.

Q. (By Mr. Bruckner) Were you aware Miss Richardson was a supporter? A. I had no way of knowing she was a supporter.

Q. Did you talk to your supervisors very much during the course of a day? A. Yes, normally several times.

Q. Did you ever talk to a supervisor about the ABC business? A. It has been discussed with supervisors, yes.

Q. Did you ever ask a supervisor what employees on her crew favored ABC?

MR. WILLARD: Whose crew?

Q. (By Mr. Bruckner) Did you ever ask any employees what employees in their crews favored the ABC? A. I don't believe I did. I probably could guess as close as they could.

399 Q. You made no attempt to find out any employees? A. Not to my knowledge.

\* \* \* \* \*

400 Q. (By Mr. Bruckner) Mr. Caldwell, what contract was in effect between your employees and the company at the time Richardson was discharged?

MR. WILLARD: Oh, for Heaven's sake.

TRIAL EXAMINER: Isn't that apparent on the face of the record?

Q. (By Mr. Bruckner) Are you familiar with that contract?

A. Yes, sir.

401 Q. Are you familiar with Article X, Section 6, of that contract which states —

MR. WILLARD (interrupting): Going to object. This is in arbitration, whether a contract is in —

Q. (Continuing) — which states, "Regular employees discharged for good cause but less than aggravated cause, will be given one week's pay in lieu thereof."

TRIAL EXAMINER: Are you familiar with the contract?

\* \* \* \*

THE WITNESS: Yes, sir.

Q. (By Mr. Bruckner) Did you give Miss Richardson one week's notice?

MR. WILLARD: I object, it's completely irrelevant.

TRIAL EXAMINER: No, I think it's material.

THE WITNESS: I don't believe she was.

Q. (By Mr. Bruckner) Did you give her "one week's pay in lieu thereof"? A. I don't think so.

\* \* \* \*

403 Q. (By Mr. Bruckner) Would you tell me about this incident again with Miss Richardson and the potato bags? I think you said it happened the first of [September], can you tell me what happened?

\* \* \* \*

A. I heard laughing out in the plant and I walked out and Ina Fay was standing there more or less waving her hands and laughing, and had a bag of potato chips in her hand. I asked her what happened and she said Eddy told her a funny joke and she couldn't keep from laughing.

404 Q. (By Mr. Bruckner) What did you say to Eddy? A. I didn't say anything to Eddy.

Q. You didn't reprimand him in any way? A. No, he was doing his work when I came out.

\* \* \* \*

405

INA FAY RICHARDSON

was recalled as a witness by and on behalf of the General Counsel, having been previously sworn, was examined and testified further as follows:

## DIRECT EXAMINATION

BY MR. BRUCKNER:

Q. Were you present in court today when Mr. Kenneth Caldwell, Sr. testified? A. Yes.

Q. Do you recall his testimony about talking to you in the plant when you were allegedly waving potato bags? A. Yes, I recall it.

Q. Did that conversation occur? A. No, no.

406

MR. WILLARD: I'm going to object. This is not proper rebuttal. She denied it occurred when she was on the stand the first time.

TRIAL EXAMINER: It may stand.

Q. (By Mr. Bruckner) Were you ever told by Mr. Caldwell that you had been warned before? A. No, I was only warned one time that I can recall, by Mr. Caldwell. It was in his office the first time.

Q. In the summer, I believe? A. Yes.

TRIAL EXAMINER: That was about the alleged potato throwing?

THE WITNESS: Yes.

MR. BRUCKNER: No more questions.

## CROSS-EXAMINATION

BY MR. WILLARD:

Q. Do you recall now whether you were laughing at a joke that Eddy told? A. No, I don't even remember that.

Q. It just didn't happen at all? A. That was the first time I ever heard of it is when he said it.

\* \* \* \* \*

408

TRIAL EXAMINER: \* \* \*

There being nothing further to come before the hearing we will stand adjourned.

\* \* \* \* \*

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

GUY'S FOODS, INC. )

and )

AMERICAN BAKERY AND CONFECTIONERY )  
WORKERS INTERNATIONAL UNION, AFL-CIO )

Case No. 17-CA-2675

and )

ASSOCIATION OF PACKERS AND DRIVERS )  
UNION )

Party of Interest )

RESPONDENT'S ANSWER

Comes now Respondent, Guy's Foods, Inc., by its attorneys, and for its Answer to the Complaint in this proceeding states that:

1. It admits the allegations contained in paragraphs I, II and III of the Complaint.

2. It admits the allegations contained in paragraph IV of the Complaint, except with respect to Chet Beatty, which it denies.

3. It denies the allegations contained in paragraphs V, VI, VII, VIII, IX and X of the Complaint.

4. It denies each and every allegation of the Complaint not specifically admitted in paragraphs 1 through 3 of this Answer.

5. Further answering, Respondent states that no unfair labor practices may be found arising out of the efforts of the Association of Packers & Drivers Union to ratify certain agreements between Respondent and the Association negotiated after the Regional Director's decision in Cases Number 17-RC-4658, 4661 and 4662, because Respondent and the Association were not granted an insulated period of time within which to complete negotiations.

6. Further answering, Respondent states that no unfair labor practices may be found arising out of the campaign preceding the election held



May 5, 1965, because said election was ordered in disregard of Respondent's rights in Case Number 17-RC-4711.

SPENCER, FANE, BRITT & BROWNE

/s/ Harry L. Browne

/s/ James R. Willard

\* \* \*

Attorneys for Respondent

G. C. Exhibit No. 1-MM

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

GUY'S FOODS, INC.

Employer )

and )

Case No. 17-RC-4711

AMERICAN BAKERY AND CONFECTIONERY  
WORKERS INTERNATIONAL UNION, AFL-CIO,  
and INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA, JOINT  
COUNCIL 56, Jointly

Petitioner )

AFFIDAVIT OF SERVICE OF Copies of DECISION AND DIREC-  
TION OF ELECTION

DATE OF MAILING April 1, 1965

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail except as shown upon the following persons, addressed to them at the following addresses:

Harry L. Browne and James R.  
Willard, Attorneys  
Spencer, Fane, Britt & Browne  
1000 Power & Light Building,  
106 West 14th Street, Kansas City,  
Missouri 64106 (Cert. #17868)  
(Attorneys for Employer)

Joseph N. Miniace, Attorney  
715 Lathrop Building, Kansas  
City, Missouri (Cert. #17869)  
(Attorney for Petitioner)

Frank P. Barker, Jr., Attorney  
Home Savings Building,  
1006 Grand Avenue, Kansas City,  
Missouri 64106 (Cert. #17870)  
(Attorney for Intervenor)

Guy's Foods, Inc.  
Attn: Guy L. Caldwell, President  
2215 Harrison, Kansas City, Missouri

Guy's Foods, Inc.  
Attn: Kenneth Caldwell, Sr.  
430 North Mosley, Wichita, Kansas  
67202

Guy's Foods, Inc.  
Attn: Robert Hilgert, Plant Manager  
7550 L Street, Omaha, Nebraska

American Bakery and Confectionery  
Workers International Union, AFL-CIO  
Attn: Sam Ancona  
3247A Main Street, Kansas City, Missouri

American Bakery and Confectionery  
Workers International Union, AFL-CIO  
Attn: William M. Meyers, Business Repr.  
3247A Main Street, Kansas City, Missouri

American Bakery and Confectionery  
Workers International Union,  
AFL-CIO  
Attn: W. T. Crow, Secy.-Treas.,  
Bus. Mgr.  
417 E. English, Wichita, Kansas  
67202

International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen  
and Helpers of America, Joint  
Council 56  
Attn: Del Nabors, Organizer  
116 W. Linwood, Kansas City, Missouri

Teamsters Local Union 795, Interna-  
tional Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and  
Helpers of America  
Attn: Sam Smith, Business Agent  
557 W. Douglas, Wichita, Kansas

General Drivers and Helpers Local  
554, affiliated with International  
Brotherhood of Teamsters, Chauff-  
eurs, Warehousemen and Helpers  
of America  
Attn: Donald F. Smith, Organizer  
1910 California St., Omaha, Nebraska

Association of Packers and Drivers  
Union  
5526 Wabash, Kansas City, Missouri

Wayne King, AFL-CIO Representative  
208 1/2 Walnut, Springfield, Missouri

Jay Dee Patrick, AFL-CIO Repre-  
sentative  
2001 Empire, Joplin, Missouri

American Bakery and Confectionery  
Workers International Union,  
AFL-CIO  
Attn: Harold Richter, Int'l Repr.  
200 Farm Credit Bldg., Omaha,  
Nebraska

Subscribed and sworn to before me

this \_\_\_\_\_ day of April, 1965

/s/ Nettie L. Rackleff

Nettie L. Rackleff, Designated Agent.

NATIONAL LABOR RELATIONS BOARD

/s/ Marie Masters

Marie Masters

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case,<sup>1/</sup> the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim to represent certain employees of the Employer.<sup>2/</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>3/</sup>

---

<sup>1/</sup> On March 26, 1965, the date briefs were due, counsel for the Employer filed a brief herein. Subsequent thereto, by letter dated March 29 and received in this office on March 30, counsel for the Employer invited the Regional Director's attention to the Board's Decision and Order in Frank Becker Towing Company, Detroit Marine Towing L. O. L. Company, 151 NLRB No. 52, reported at 58 LRRM 1434, decided March 5, 1965. In substance, the letter asserts that the Board's ruling in that case "reaffirmed the principle that we are advocating should be followed in the Guy's matter." The letter also indicates that copies thereof were mailed to counsel of record for the Petitioner and the Intervenor. Since, in effect, this letter constitutes a supplemental brief, it will be disregarded as having been filed untimely.

<sup>2/</sup> Association of Packers and Drivers Union was permitted to intervene on the basis of an asserted contractual interest.

<sup>3/</sup> The Employer contends, in substance, (1) that a certain collective bargaining agreement entered into between it and the Intervenor constitutes a bar to the instant proceeding; (2) that as a matter of policy, the Employer and the Intervenor should be entitled, without any intervening

(Continued on next page)

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

<sup>3/</sup> (Continued from preceding page)  
petition being filed, to a six-month period from the dismissal by the Regional Director of certain petitions involving the Employer on the one hand and one of the joint petitioners and one of its locals on the other; Cases Nos. 17-RC-4658, 4661, and 4662; (3) that the Employer and the Intervenor should be granted "no less than a sixty-day insulated period" to negotiate a contract to replace the prior collective bargaining agreement expiring with February 14, 1965; and (4) that the instant petition must be dismissed because the Joint Petitioner does not intend to bargain jointly. These contentions are rejected.

Regarding the first contention, it is clear that the February 14, 1965, agreement does not constitute a bar to the instant petition which was filed on February 26. While it is, by its terms, to be effective February 15, 1965, it also specifically provides for its ratification by the membership of the Intervenor and notification of the Employer to this effect. Although the record indicates a number of efforts to obtain ratification by the employees in certain segments of the unit, it appears from the record that such ratification has not taken place, either prior to the filing of the instant petition on February 26, 1965, or even prior to March 18, the date of the hearing in this matter. The law is clear that where, as here, the contract itself makes prior ratification by the membership a condition precedent to contractual validity, the failure to secure ratification renders the document no bar to an election. Appalachian Shale Products Co., 121 NLRB 1160 (1958). Moreover, it is noted that the Employer and the Intervenor found it necessary, on March 1, 1965, to enter into a Memorandum of Clarification concerning the February 14, 1965, agreement.

In support of its second contention, the Employer asserts that the rule of Campos Dairy Products, Limited, 107 NLRB 715 (1954), and Sears, Roebuck & Company, 107 NLRB 716 (1954) should be applicable to dismissals of petitions where the parties do not withdraw. In this connection, the Employer also refers to Section 101.18 of the Board's Statements of Procedure. Both Campos and Sears are patently not applicable here. In the former, the claiming union filed a disclaimer of interest subsequent to a hearing on the petition filed by the Employer there. In Sears, the petitioning union requested permission to withdraw its petition after the Board issued a decision and direction of election. I fail to see where the section of the Statements of Procedure referred to has any bearing on the instant matter. Moreover, the units involved in the prior proceedings referred to above were different from the unit involved here.

(Continued on next page)



All employees of Guy's Foods, Inc., including route salesmen, but EXCLUDING office-clerical employees, route supervisors, and professional employees, guards, and supervisors as defined in the Act.<sup>4/</sup>

<sup>3/</sup> (Continued from preceding page)

Regarding the third point made, it would appear that the Employer misunderstands the import of the Deluxe Metal (121 NLRB 995) rule regarding the sixty-day insulation period. All that rule intends to do is to prevent the filing of a rival petition within the last sixty days prior to the expiration of an existing agreement. The instant petition was filed at a time when the earlier agreement between the Employer and the Intervenor had expired, and while there was no effective new agreement. Moreover, the very fact that the Employer and the Intervenor were able to enter into an agreement, although subject to ratification by the Intervenor's membership, after the dismissal of the earlier petitions and prior to the expiration of the old agreement, would tend to indicate that they had adequate time to consider the issues.

In the absence of any case authority or policy statement by the Board which would permit the granting of such additional periods as suggested by the Employer in its second and third points, its request to that effect is denied.

In support of its fourth and last contention, the Employer relies on Sears, Roebuck and Company, 106 NLRB 1395, 1396 (1952). In that case, seven local unions formed a committee for the purpose of organizing certain employees, but the Board found, inter alia, that "the record negates any good-faith intention on the part of the seven local unions to bargain on a joint basis for the overall unit." I cannot draw the same conclusion from the record before me. Rather, I conclude from it that the two labor organizations constituting the Joint Petitioner intend to bargain jointly, if successful in the election hereinafter directed, even though one of them might be the spokesman with regard to certain job classifications and the other for the remaining categories of employees. In any event, since the two unions, if successful, will be certified jointly, the Employer may insist that they bargain jointly for all employees in the unit. See S. D. Warren Company, 150 NLRB No. 32 (1964); Florida Tile Industries, Inc., 130 NLRB 897, 898 note 3 (1961).

<sup>4/</sup> The unit is in substantial accord with the agreement of the parties. It is the historical, employer-wide unit in which the Employer and the Intervenor have been bargaining.



# **DIRECTION OF ELECTION<sup>5/</sup>**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective-bargaining purposes by AMERICAN BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION, AFL-CIO, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, JOINT COUNCIL 56, Jointly; or, by ASSOCIATION OF PACKERS AND DRIVERS UNION; or, by Neither

Dated April 1, 1965  
at Kansas City, Missouri

Martin Sacks, Regional Director  
for the Seventeenth Region.

---

<sup>5/</sup> Within 13 days from the date of this decision and direction of election, the Employer shall submit to the Regional Director for the Seventeenth Region a complete and accurate list of all employees in the unit found appropriate herein who would be eligible voters pursuant to this direction of election. If review is requested and granted, the Employer shall submit a complete and accurate list of all employees in the unit found appropriate by the Board who would be eligible voters, within three days from the date of the Board's decision and direction of election, if any.

**REQUEST FOR REVIEW  
AND ORAL ARGUMENT**

This Request for Review by the Employer is made under the provisions of the Board's Rules and Regulations, Section 102.67(c)(1) and (4).

The first question before the Board is raised because there is a substantial question of law or policy, and there is an absence of Board precedent. Should the parties to a collective bargaining contract have a sixty (60) day insulated period for negotiation of a contract between them when a representation petition is filed by another labor organization prior to the start of the normal sixty (60) day insulated period and dismissed by the Regional Director less than ten (10) days before the expiration date of the contract?

The request for review is also made because there are compelling reasons for reconsideration of two other important Board rules and policies. (a) Should the Board continue its policy of distinguishing between collective bargaining agreements expressly subject to ratification, and those where the parties merely have an understanding that ratification is required, for purposes of application of the contract bar rule? (b) Should a dismissal of a petition by a Regional Director because the unit requested is smaller than the appropriate unit be treated as a withdrawal with prejudice?

The parties to this proceeding are (1) Guy's Foods, Inc. (hereinafter called "Guy's" or the "Company"), (2) the certified bargaining representative and intervenor in this proceeding, Association of Packers and Drivers Union (hereinafter called "The Association"), and (3) the Petitioners, the American Bakery and Confectionery Workers International Union and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Joint Council 56 (herein referred to jointly as "Petitioners" and individually as "ABC" and "Teamsters," respectively).

By direction of election dated April 1, 1965, in 17-RC-4711, the Regional Director of the Seventeenth Region ordered an election be held

for a unit consisting of substantially all of the Company's employees. There is no dispute as to the appropriateness of the unit in this proceeding. The questions raised above were raised and presented to the Regional Director prior to his decision and direction.

A chronology of the relevant facts is essential to an understanding of the unique problem in this case. The Company and The Association had been parties to collective bargaining agreements for many years since The Association's certification by the Board. A two-year agreement, containing an automatic renewal clause, had a termination date of February 14, 1965. (18) <sup>1/</sup> Pursuant to the provisions of the agreement The Association gave notice to the Company of its desire to reopen the contract more than sixty (60) days prior to February 14, and arrangements were made for negotiations. (20) Before the insulated period began, the American Bakery and Confectionery Workers Union, one of the joint petitioners in this proceeding, filed three separate petitions for representation (17-RC-4658, 4661, 4662), and negotiations between the Company and The Association were immediately suspended. (20) The units requested were separate plant units in Wichita, Kansas, Kansas City, Missouri, and Omaha, Nebraska. These were not the units found appropriate by the Regional Director in an earlier case decided in 1964 (Case 17-RC-4350, 4368, 4363). (29) Through no fault of The Association or the Company, but at the request of ABC, the hearing and time for filing of briefs was delayed and a decision was not handed down until February 5, 1965, and was not received by the Company until February 6 (a Saturday). The petitions by ABC were dismissed on the grounds that the unit was not appropriate.

With barely a week to go before the contract expired, The Association and the Company attempted to schedule a negotiation session. Because the bargaining committee was composed of people living in several

---

<sup>1/</sup> Numbers in parenthesis are page references to the official transcript.

different states, it was not possible to schedule an immediate session. Anticipating this problem, the Company had requested at the 1965 hearing (Case 17-RC-4658, 4661, 4662) a special sixty (60) day insulated period after the Regional Director's decision, but the request was denied on the grounds that there appeared to be "no basis for such action either in the statute or in applicable legal precedent." (22) The first and only session for collective bargaining that could be held in the circumstances was held on Saturday, February 13, 1965, with the contract due to expire within 36 hours. According to the Company witness who conducted the negotiations, and who has had considerable experience in the field, the situation was detrimental to sound and peaceful procedures necessary to collective bargaining negotiations. This indeed is the basis for the Board's decisional rule for a sixty (60) day insulated period. (23-27)

After a lengthy session on February 13, wherein more than 20 Union demands were made and discussed, agreement was reached. On Sunday, February 14, 1965, the agreement was reduced to writing with the provision that the agreement was to be "submitted to the membership of the Union [Association] for approval." (Employer's Exhibit 1) (28) The agreement, together with a memorandum of clarification dated March 1 (Employer's Exhibit 2) (29), has not yet been approved. The Company requested that the agreement not be submitted for ratification because the "instability created by these petitions would create problems and ratifications" and that the matter should be suspended pending the "outcome of this proceeding." (30)

The joint petition in this case was filed on Friday, February 26, but was not mailed to the Company by the Board until Monday, March 1, and was not received by the Company until March 2. (6, 29) The agreement, dated February 14, was put into effect except as to economic matters which were to be retroactive to February 15, upon approval by The Association.

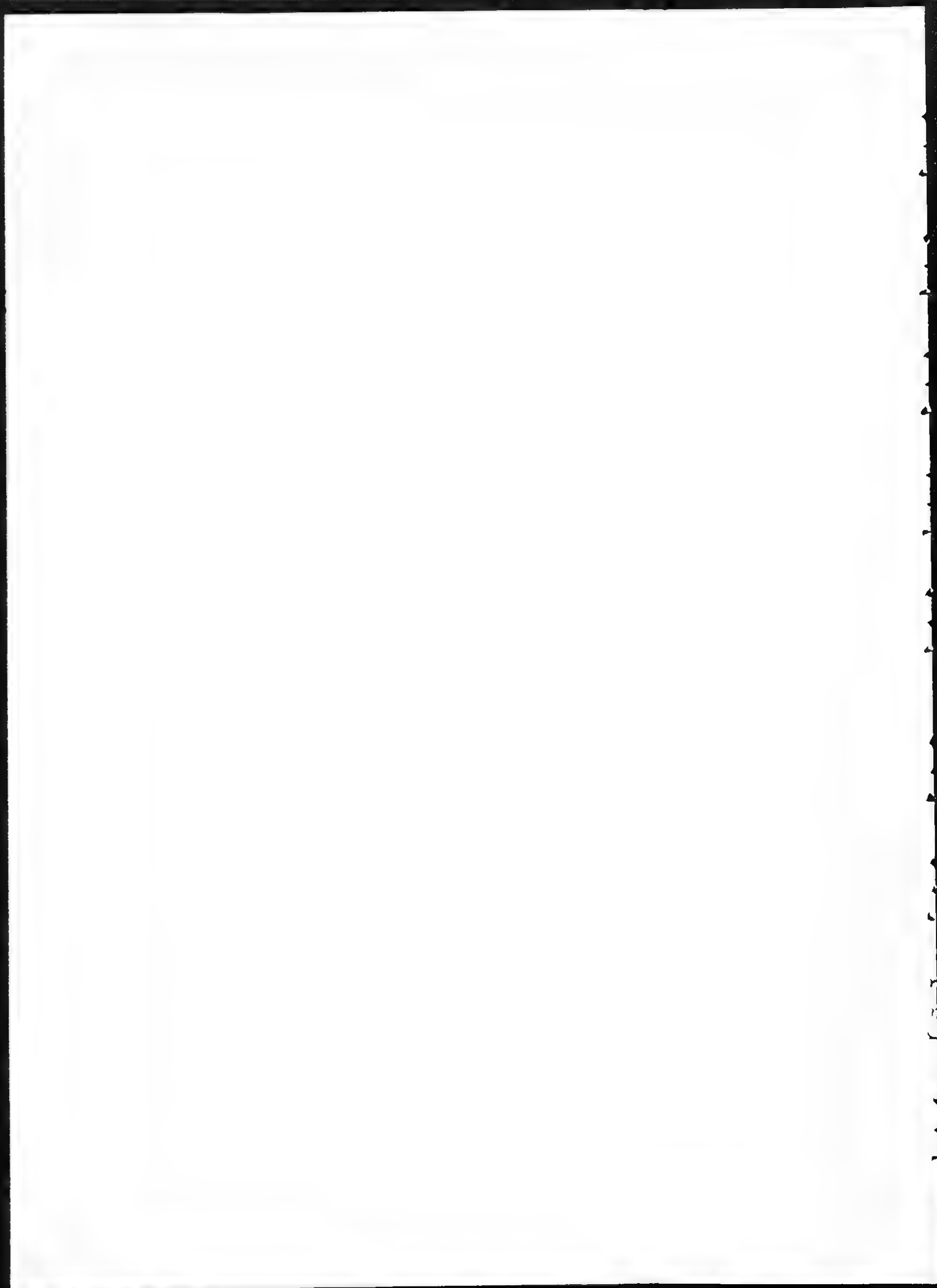


### ARGUMENT

The request for a sixty (60) day insulated period is based upon the same principle justifying the sixty (60) day insulated period announced in Deluxe Metal Furniture Company, 121 NLRB 995, 1000. As the Board noted, the sixty (60) day insulated period was designed to give the parties to a collective bargaining contract time "during which the parties may negotiate and execute a new or amended agreement without the intrusion of a rival petition." This purpose was clearly frustrated here. Through no fault of the Company or The Association, and simply because they adhered to the processes of the Board, they were given exactly one (1) week within which to negotiate a contract covering employees in a unit of several states. The whole purpose of the sixty (60) day insulated period is to provide the parties to a collective bargaining agreement "a reasonable period of time within which to bargain for and reach a new contract. . . ."

Frank Becker Towing Co., 58 LRRM 1434, 151 NLRB No. 52. In the Frank Becker case, a period of nearly four months was not regarded as a reasonable period of time. The Decision and Direction of Election displays a regrettable lack of understanding of the realities of collective bargaining in its comment that "the very fact that the employer and the Intervenor were able to enter into an agreement . . . after the dismissal of the earlier petitions and prior to the expiration of the old agreement, would tend to indicate that they had adequate time to consider the issues." Any experienced negotiator, whether representing a Company or a Union, would testify that one session is hardly adequate to dispose of twenty issues regardless of how frivolous some might be. A better explanation is the desire of the parties to conclude almost any agreement to avoid further harassment and delay in reaching an agreement. From the Company's standpoint, an election and the accompanying campaign can only mean disruption of production and loss of efficiency -- a continuation of the turmoil and instability created by the filing of one petition after another. From The Association's standpoint, it meant a delay in obtaining wage increases sought by its membership, and a further risk of raids on its membership by rival





between the parties or some requirement of the Union constitution. The Board in its expertise can take notice that at least 90% of all collective bargaining agreements are expressly or impliedly conditioned upon ratification by the membership of the Union. The artificial rule premised upon the language used by the parties does not tend to promote industrial stability or democracy within a Union. It encourages ambiguity in contract language rather than clarity, and subterfuge rather than honesty. Should the parties in this case have concealed the fact that the Union constitution required ratification or that this was a long standing practice of the parties? This arbitrary rule also emphasizes the inequity created by the frivolous petition to forestall negotiations. It is almost impossible to negotiate a contract in the few days allowed and completely impossible to negotiate and ratify a contract where, as here, the membership is in such distant cities as Wichita, Kansas, Omaha, Nebraska, Tulsa, Oklahoma, and Little Rock, Arkansas, not to mention Des Moines, Iowa.

Regardless of the disposition of the other points it is difficult to see the rationale of a distinction between the withdrawal of a petition with prejudice and a dismissal without prejudice. Had the ABC, upon being administratively advised by the Regional Director of the inappropriateness of the unit, withdrawn its petitions, it would have been a withdrawal with prejudice foreclosing the refiling within a six-month period. However, by refusing to accept the decision of the Regional Director and pressing their claims through a hearing, in spite of a contrary decision one year earlier, ABC was able to avoid this penalty. Filing petitions for inappropriate units to forestall negotiations, delaying the decision as long as possible and forcing a dismissal rather than a withdrawal, appear to be a blatant tactical maneuver to deny the Company and The Association an opportunity to negotiate a collective bargaining agreement. Petitioners get an additional benefit from these tactics because of the frustration of the employees to seek improved benefits and wage increases. The Board should not permit its processes to be so abused.

From a purely practical standpoint of Board administration, there is yet another disadvantage to this rule. It serves not to reduce litigation, but to encourage controversies. Why should a Union withdraw a petition when simply by going to a hearing it can take a dismissal without prejudice rather than a withdrawal with prejudice. We see no rational policy or reason for applying the six-months rule in the one case and not the other.

The Regional Director admits that he has no precedent or Board policy to guide his decision. Under the circumstances, the matter should be decided by the Board, not the Regional Director, and any interested parties should have the opportunity to present their views orally to the Board. Therefore, it is respectfully requested that the Board grant oral argument in this case.

We respectfully submit the interests of industrial stability and free collective bargaining require the review of this case and (1) the creation of a sixty (60) day insulated period in situations such as this, (2) the elimination of the artificial "ratification" requirement of the contract bar rule, and (3) the elimination of the distinction between a withdrawal with prejudice and a dismissal.

SPENCER, FANE, BRITT & BROWNE

/s/ Harry L. Browne

/s/ James R. Willard

\* \* \*

Attorneys for Guy's Foods, Inc.

[Certificate of Service]

---

G. C. Exhibit No. 1-00

SPENCER, FANE, BRITT & BROWNE

LAW OFFICES  
1000 Power & Light Building  
106 West 14th Street  
KANSAS CITY, MISSOURI 64105

Area Code 816  
GRand 1-0848

April 12, 1965

\* \* \*

National Labor Relations Board  
1717 Pennsylvania Avenue, N. W.  
Washington, D. C. 20570

Re: Guy's Foods, Inc.  
Case No. 17-RC-4711

Gentlemen:

Will you please consider this as a supplement to our request for review previously filed.

We respectfully point out that the same policy considerations which we are requesting in this case — a reasonable period of time within which the Company and the Association (Intervenor) could engage in unimpeded collective bargaining after the Petition was dismissed — were adopted by the Board in Mar-Jac Poultry Company, 136 NLRB 785. There the Board extended the certification "year" in order to "insure the parties a reasonable time in which to bargain without outside interference or pressure such as a rival petition." In the same case, the Board also announced that "in future cases revealing similar inequities" the parties would be granted an extension of time.

Similarly, in Lamar Hotel, 137 NLRB 1271, the Board extended the certification year because during the original period of time a petition for clarification of the unit was pending and "the union has been deprived of its right to unimpeded collective bargaining."

We do not know whether there have been any prior cases where the insulated period has been so delimited in time. The problem has, however, arisen before in a case in which counsel was personally interested (Base Services, Inc., a subsidiary of ITT Kellogg Company, 21-RC-8890 and 21-RC-9020), and it should be resolved.

What the Company is asking for here is nothing but simple justice and the application of plain common sense.

Respectfully submitted,

/s/ Harry L. Browne

HLB:hm

cc: Frank P. Barker, Jr., Esq.  
Joseph N. Miniace, Esq.  
Mr. Martin Sacks

Copies have been sent to all parties in this case

---

G. C. Exhibit No. 1-PP

[Addressees and addresses omitted from this exhibit]

WASHINGTON DC 4-23-65 1430R

RE: GUYS FOODS, 17-RC-4711. IT IS HEREBY ORDERED THAT THE EMPLOYERS REQUEST FOR REVIEW OF THE REGIONAL DIRECTORS DECISION AND DIRECTION OF ELECTION BE, AND IT HEREBY IS, DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. BY DIRECTION OF THE BOARD:

HOWARD W KLEEB ASSOC EXEC SECY  
17-RC-4711  
GEP 1440R

---



G. C. Exhibit No. 1-QQ

THE AMERICAN BAKERY AND CONFECTIONERY WORKERS'  
INTERNATIONAL UNION . AFL-CIO

May 6, 1965

In the matter of

Guy's Foods, Inc.

and

American Bakery & Confectionery  
Workers' Int'l Union, AFL-CIO

Case 17-RC-4711

## Objections to Election

Comes now the American Bakery & Confectionery Workers' International Union, AFL-CIO objecting to the conduct of election in the above numbered case.

We respectfully submit that there are compelling reasons for an investigation and consideration of this matter.

## Facts

The Company through its officers, agents, representatives and supervisors created a laboratory condition under which a free election could not be held, by:

1. Locating voting booths within six inches of time clocks which employees use at various times during the day including the time the polls were open.
2. Management was in or near the polling place on several occasions.
3. Polling place was under surveillance by supervisors.
4. Various supervisors instructed employees to wear signs supporting the Association of Packers and Drivers.
5. Various supervisors wore signs encouraging employees to support the Association of Packers and Drivers.
6. Various supervisors wore signs making the threat, quote, "I had rather fight than switch".
7. Election notices were not posted in a number of locations.
8. Active participation of Company representatives in various forms of support to the Association of Packers and Drivers.

9. Company propaganda attached to time cards during time of election encouraging workers to vote for Association of Packers and Drivers.

We respectfully request that the election in the above numbered case be set aside and declared null and void.

/s/ Harold Richter  
International Representative  
American Bakery & Confectionery  
Workers' Int'l Union, AFL-CIO

CC: Harry L. Browne  
Frank P. Barker

---

G. C. Exhibit No. 1-TT

### ORDER DIRECTING HEARING

On May 5, 1965, pursuant to a Decision and Direction of Election issued by the Regional Director for Region 17 on April 1, 1965, an election by secret ballot was conducted in the above-entitled proceeding, under the direction and supervision of said Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations.

The tally of ballots shows that there were approximately 470 eligible voters and that 401 ballots were cast, of which 127 were for the Petitioner, 257 were for the Intervenor, 5 were against the participating labor organizations, 9 were challenged, and 3 were void.

On May 7, 1965, the Petitioner filed timely objections to the conduct of the election. The Acting Regional Director caused an investigation to be made of the objections, and thereafter, on June 2, 1965, issued and served on the parties his Report on Objections and Recommendations. In his report, the Acting Regional Director stated that it appears that the Employer's conduct alleged to be objectionable is, in substantial part, similar to, and related with, certain issues in Cases Nos. 17-CA-2602

and 17-CA-2632, and that it is closely connected with the events involved in said complaint proceedings. He, therefore, recommended to the Board that it direct a hearing on the issues raised by the Petitioner's objections, and that it authorize the Regional Director for Region 17 to consolidate the hearing with the hearing to be held on the complaints previously issued in Cases Nos. 17-CA-2602 and 17-CA-2632.

On June 7, 1965, the Employer filed timely exceptions to the Acting Regional Director's Report on Objections and Recommendations, contending that the objections are not closely related to the alleged unfair labor practices and do not require consolidation, and that they should be dismissed. No other exceptions were filed within the time provided therefor.

The Board, having duly considered the matter, is of the opinion that the issues raised by the Petitioner's objections can best be resolved by a hearing, and hereby adopts the Acting Regional Director's recommendations as contained in his report. Accordingly,

IT IS HEREBY ORDERED that a hearing be held to resolve the issues raised by the Petitioner's objections, and that such hearing may be consolidated with any hearing in Cases Nos. 17-CA-2602 and 17-CA-2632 and held before a Trial Examiner to be designated by the Chief Trial Examiner. In the event that the unfair labor practice cases are disposed of prior to the hearing, the Regional Director for Region 17 is authorized to designate a hearing officer to hear the representation matter.

IT IS FURTHER ORDERED that the Trial Examiner, or the Hearing Officer, designated for the purpose of conducting the hearing, shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within the time prescribed by the Board's Rules and Regulations, any party may file with the Board in Washington, D. C., an original and seven copies of exceptions thereto. Immediately upon the filing of such exceptions, the

party filing the same shall serve a copy thereof on each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the Trial Examiner, or the Hearing Officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to said Regional Director for the purpose of arranging such hearing, and that the Regional Director be, and he hereby is, authorized to issue notice thereof.

Dated, Washington, D. C., June 18, 1965.

By direction of the Board:

/s/ John C. Truesdale  
Associate Executive Secretary

---

G. C. Exhibit No. 2



**Vote  
for  
Packers  
and  
Drivers  
Union**

---

## WESTERN UNION

\* \* \*

TELEGRAM (27) . . .

\* \* \*

\* \* \*

---

---

A 028 SSA052

K LLFO54 PD=KANSAS CITY MO 4 1017A CST=

MRS. LUCILLE BERNARDI, PRESIDENT ASSN OF PACKERS AND  
DRIVERS UNION, GUYS FOODS INC, DLVR DONT PHONE =  
2215 HARRISON (SK) KSC=

ANY ACTION TAKEN ON CONTRACT NEGOTIATIONS AFTER  
FRIDAY FEBRUARY 26, 1965 IS ILLEGAL AND WILL RESULT  
IN UNFAIR LABOR CHARGES-

HAROLD RICHTER INTERNATIONAL REPRESENTATIVE  
OF AMERICAN BAKERY AND CONFECTIONERY WORKERS  
INTERNATIONAL UNION =

---



## NOTICE - NITE SHIFT

Sign you name if you want to work late Tuesday night or get off to attend Union meeting.

Work

/s/ Linda Long  
/s/ Patsy Weaver  
/s/ Marjorie Wellborn  
/s/ Paul Sandez  
/s/ Rowena Honn  
/s/ Hudie Golden  
/s/ Anna Hottje

Get Off Early

/s/ Popsicle Pete  
/s/ Ina Richardson  
/s/ Imogene Davis  
/s/ Eloise Huff  
/s/ Sharon Chebultz  
/s/ Inez Echols

Work tonite off Fri -

/s/ Billie  
/s/ Jean Hall

---

## Charging Party Exhibit No. 3

MEMO TO ALL EMPLOYEES:

I AM SURE THAT ALL OF YOU HAVE BEEN INFORMED ABOUT THE OUTCOME OF THE RECENT ELECTION BETWEEN THE ASSOCIATION OF PACKERS AND DRIVERS, AND THE ABC AND TEAMSTERS.

I BELIEVE THE ACTUAL VOTE WAS: 257 for PACKERS & DRIVERS UNION, vs  
127 for TEAMSTERS AND ABC.

FRANCES AND I, WANT YOU TO KNOW HOW MUCH WE APPRECIATE THE EFFORT THAT EACH OF YOU PUT FORTH, CONCERNING THIS ELECTION, AND OF COURSE WE CAN'T TELL YOU HOW HAPPY AND THANKFUL WE ARE THAT THE VOTE CAME OUT THIS WAY. IT HAS ALWAYS BEEN OUR SINCERE WISH THAT WE TREAT EACH EMPLOYEE FAIRLY, HONESTLY, AND ANYONE THAT HAS NOT BEEN TREATED THIS WAY, WE WOULD LIKE TO KNOW SAME, SO THAT IT CAN BE TAKEN CARE OF. IT HAS ALWAYS BEEN OUR BELIEF THAT WHERE WE HAVE A FRIENDLY AND MUTUAL RELATIONSHIP AS EXISTS IN OUR COMPANY; WHERE EMPLOYEES ARE TRULY INTERESTED IN THE WELFARE OF THE COMPANY, AND WHERE THE COMPANY IS TRULY INTERESTED IN THE WELFARE OF EACH OF THE EMPLOYEES, THAT THIS COMBINATION CERTAINLY CANNOT BE BEAT, AND ONE THAT IS GOOD FOR EVERYONE CONCERNED.

WE SAY AGAIN, THAT WE CERTAINLY APPRECIATE THIS VOTE OF CONFIDENCE THAT YOU HAVE GIVEN FRANCES AND I, AND WE WILL DO OUR UTMOST TO BE WORTHY OF SAME.

I AM SORRY TO SAY THAT WE HAVE BEEN PREVENTED FROM COMPLETING OUR AGREEMENT WITH THE ASSOCIATION OF PACKERS & DRIVERS. THE ABC HAS REFUSED TO ABIDE BY YOUR WISHES. THEY HAVE FILED OBJECTIONS TO THE ELECTION AND MORE UNFAIR LABOR PRACTICE CHARGES. THESE MUST BE INVESTIGATED BY THE LABOR BOARD. I AM CONFIDENT THAT THEY WILL BE THROWN OUT IN SHORT ORDER BUT UNTIL THEN WE MUST CONTINUE TO WAIT. AS SOON AS THIS IS DONE, WE WILL BE ABLE TO GO AHEAD.

/s/ Guy & Frances

---

EXCERPTS FROM  
AGREEMENT

THIS AGREEMENT is made between GUY'S FOODS, INC., hereinafter called the Company, and ASSOCIATION OF PACKERS & DRIVERS' UNION, hereinafter called the Union.

\* \* \* \* \*

ARTICLE II - RECOGNITION

Sec. 1. The Company recognizes the Union as the exclusive bargaining representative of all employees of the Company, for plants and operations wherever located, including route salesmen, but excluding office clerical employees, route supervisors, guards, and supervisors as defined in the National Labor Relations Act, as amended.

\* \* \* \* \*

ARTICLE III - UNION SECURITY

Sec. 1. Employees who are members of the Union at the time this Agreement becomes effective shall be required as a condition of continued employment to remain members of the Union. Employees who are not members of the Union at the time this Agreement becomes effective shall be required as a condition of continued employment to become members of the Union on or after the 30th day following such effective date. Employees hired after the effective date of this Agreement shall be required as a condition of continued employment to become members of the Union on or after the 30th day following the beginning of their employment. This section shall apply to permanent part-time employees but shall not apply to temporary employees herein defined as employees relieving on vacation or trainees, provided such employment is not more than sixty (60) days.

Sec. 2. In states in which Section 1 of this Article III may not lawfully be enforced, the following provisions to the extent that they are lawful, shall apply:

Each employee who would be required to acquire or maintain membership in the Union if Section 1 of this Article III could lawfully be enforced, and who fails voluntarily to acquire or maintain membership in the Union, shall be required as a condition of employment, on the 30th day following the beginning of such employment, to pay to the Union each month a service charge as a contribution toward the administration of this Agreement and the representation of such employees. The service charge for the first month shall be in an amount equal to the Union's regular and usual initiation fee and monthly dues and for each month thereafter in an amount equal to the regular and usual monthly dues.

Sec. 3. Employees shall be deemed probationary employees for the first sixty (60) days of their employment and the provisions of this Agreement shall not apply to them. The Company may discharge or discipline or otherwise change the status of such employees without recourse to this Agreement and without protest by the Union or employees. After such probationary period, the employee shall be deemed to be a regular employee and his seniority with the Company shall be deemed to have commenced on the first day of his employment.

Sec. 4. Any employee who shall be elected to attend to the business of the Union necessitating a leave of absence may be granted leave of absence not exceeding two (2) weeks without pay and without affecting his seniority rights, provided he presents proper authority from the Union in regard to such Union business.

Sec. 5. The representatives of the Union shall have the privilege to perform their duties on Company time within reasonable limitations but such performance may be curtailed by the Company if the Company deems the Union is abusing this privilege.

#### ARTICLE IV — CHECK-OFF & NOTICE

Sec. 1. The Company agrees to deduct from the first pay in each month Union dues for each member of the Union for the preceding month and remit the total sum so collected to the Union within twenty (20) days following such deduction; provided, however, the employee authorizes the Company to make such deduction by the following written assignment, one copy of which will be retained by the Company, the other copy to be retained by the Union:

I hereby assign to the Association of Packers & Driver's Union and authorize and direct Guy's Nut and Potato Chip Co. or Guy's Foods, Inc. to deduct from my earnings, accumulated to my credit, regular Union dues and assessments charged against me by the Association of Packers & Drivers' Union. The sum so to be paid to the Union shall be as specified by the Union from time to time by proper certification to the Company by the officers of the Union.

This assignment, authorization and directive shall be irrevocable for a period of one (1) year, or until the termination of the collective agreement between the Company and the Union, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be the shorter, unless written notice is given by me to the Company not more than twenty (20) and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Company and the Union, whichever occurs sooner.



This authorization is made pursuant to the provisions of Section 302 (c) of the Labor-Management Relations Act of 1947.

I further agree that Guy's Nut and Potato Chip Co. or Guy's Foods, Inc. shall be save harmless for deductions made under these circumstances.

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

Sec. 2. The Company further agrees that on or before the 20th day of each month during the period of this Agreement it shall forward to such officer or agent of the Union as the President of the Union shall designate, the names and addresses of all employees both packers and drivers, who have been hired or rehired during the preceding month so as to become "employees of the Company" as that term is defined in Article II, Section 1 of this Agreement. The Company further agrees that it will notify said designate of the President of the Union on or before the 20th day of each month during the period of this Agreement of the names and addresses of those employees, both packers and drivers, who have been terminated during the preceding month or who have been promoted or demoted from supervisory status during the preceding month.

\* \* \* \* \*

## ARTICLE XII — TERMINATION

\* \* \* \* \*

Sec. 3. This Agreement shall remain in full force and effect from February 15, 1963, to and including February 14, 1965, and shall continue thereafter successively for periods of one (1) year unless notice is given

in writing by one party to the other not less than sixty (60) days prior to February 15, 1965, or to any annual anniversary date thereafter of its desire to terminate, modify, or amend this Agreement, and, in such case, this Agreement shall continue in full force and effect until superseded by a new agreement. It is further agreed that by sixty (60) days' written notice by one party to the other prior to February 15, 1964, this contract may be reopened on hourly rates of pay. If either party so notifies the other and if the parties are unable to agree upon hourly rates of pay within ninety (90) days after such date, then the provisions of Section 3 of Article VI shall be inapplicable.

Dated this 7th day of March, 1963.

GUY'S FOODS, INC.

By /s/ Guy L. Caldwell

ASSOCIATION OF PACKERS &  
DRIVERS' UNION

By /s/ Loral Michael

---

## Respondent's Exhibit No. 3

December 10, 1964

Mr. Frank P. Barker, Jr.  
Jackson, Wade & Barker  
Attorneys At Law  
820 Home Savings Building  
1006 Grand Avenue  
Kansas City, Missouri 64106

Re: Packers & Drivers Union-  
Guy's Foods, Inc. Contract

Dear Frank:

This will acknowledge receipt of your letter of November 27, 1964, to Mr. Guy Caldwell expressing a desire to reopen and negotiate changes in the current collective bargaining contract between the above parties. It now appears that I will be handling negotiations for the Company and I would be pleased to meet with you and other union representatives at your convenience. I would suggest that we not attempt to schedule any meetings prior to December 15, but after that date my schedule seems open.

Best regards,

[/s/ James R. Willard]

JRW:jm

cc: Mr. Guy Caldwell

---

## Respondent's Exhibit No. 3

[Rec'd -Nov. 28, 1964]

JACKSON, WADE & BARKER  
ATTORNEYS AT LAW  
820 Home Savings Building  
1006 Grand Avenue  
KANSAS CITY, MISSOURI 64106

\* \* \*

\* \* \*

November 27, 1964

Mr. Guy Caldwell  
Guy's Foods, Inc.  
2215 Harrison Street  
Kansas City, Missouri

Re: Packers & Drivers Union-  
Guy's Foods, Inc. Contract

Dear Guy:

The contract between the Union and the Company dated March 7, 1963, terminates on February 14, 1965, unless continued in effect by the parties.

This is to give notice on behalf of the Union of its desire to modify and amend the current contract and to enter into negotiations with you and your attorneys for a new agreement.

We will be pleased to meet with you at your early convenience.

Yours very truly,

JACKSON, WADE &amp; BARKER

By

/s/ Frank P. Barker, Jr.

FPB/Jr:w

cc: Mr. Arthur J. Doyle

EXCERPTS FROM  
AGREEMENT

THIS AGREEMENT is made between GUY'S FOODS, INC., hereinafter called the Company, and ASSOCIATION OF PACKERS & DRIVERS' UNION, hereinafter called the Union.

The collective bargaining agreement between the parties dated March 7, 1963 and the wage schedules effective February 15, 1964, are incorporated herein by reference, except as specifically modified. The above mentioned agreements are specifically amended as follows:

\* \* \* \* \*

14. This Agreement shall remain in full force and effect from February 15, 1965, to and including May 1, 1968, and shall continue thereafter successively for periods of one (1) year unless notice is given in writing by one party to the other not less than sixty (60) days prior to March 1, 1968, or to any annual anniversary date thereafter, of its desire to terminate, modify, or amend this Agreement, and, in such case, this Agreement shall continue in full force and effect until superseded by a new agreement. It is further agreed that by sixty (60) days written notice by one party to the other prior to February 15, 1966, this contract may be reopened as to the Company's present plan of hospitalization, surgical sickness and life insurance benefits. It is further agreed that by sixty (60) days written notice by one party to the other prior to February 15, 1967, this contract may be reopened on rate of pay. If either party so notifies the other and if the parties are unable to agree upon rates of pay within ninety (90) days after such date, then the provisions of Section 3 of Article VI shall be inapplicable.



THIS AGREEMENT, executed this 14th day of February, 1965, shall be effective February 15, 1965. It is understood that this Agreement must be submitted to the membership of the Union for approval. If this Agreement is not approved by the membership it shall terminate upon notice to the Company by the Union of such action by the membership.

Wage increases shall be effective on February 15, 1965, but shall not be paid until the Union notifies the Company that this Agreement has been approved.

GUY'S FOODS, INC.

ASSOCIATION OF PACKERS &  
DRIVERS' UNION

/s/ James R. Willard  
Attorney For Company

/s/ Frank P. Barker, Jr.  
Attorney For Union

---

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Wichita, Kansas  
Kansas City, Missouri  
Omaha, Nebraska

GUY'S FOODS, INC.	Employer
and	
AMERICAN BAKERY AND CONFECTIONERY WORKERS	
INT'L UNION, AFL-CIO, LOCAL UNION #245	Petitioner
and	
THE AMERICAN BAKERY AND CONFECTIONERY	
WORKERS' LOCAL UNION, AFL-CIO	Petitioner
and	
AMERICAN BAKERY AND CONFECTIONERY	
WORKERS INTERNATIONAL UNION, AFL-CIO	Petitioner

CASES NOS. 17-RC-4658, 4661, 4662

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated<sup>1/</sup> hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2/</sup>

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

<sup>1/</sup> The petition in Case No. 17-RC-4658 was filed on December 10 and those in Cases Nos. 17-RC-4461 and 4462 on December 14, 1964. They were consolidated by order dated December 17, 1964.

<sup>2/</sup> The Employer's Motion to Dismiss Petitions (hereby received into the record as Board's Official Exhibit No. 2) is disposed of in accordance with this Decision and Order. The Employer's request, contained in the Motion, that it be granted an additional 60-day "insulated period" from the date of the order herein for the Employer and the Intervenor to negotiate a new collective bargaining contract is denied, there appearing to be no basis for such action, either in the statute or in applicable legal precedent.

Upon the entire record in this case, the Regional Director finds:<sup>3/</sup>

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim to represent certain employees of the Employer.<sup>4/</sup>

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Petitioners herein seek separate production and maintenance units at the Employer's Wichita, Kansas, Kansas City, Missouri, and Omaha, Nebraska, plants, respectively. The Employer and the Intervenor take the position that the units sought are inappropriate. They contend there is a controlling bargaining history based upon an employer-wide unit.

The Employer is engaged in the manufacture and wholesale distribution and sale of potato chips, cheese sticks, and related items. It maintains four production facilities at Kansas City, Missouri, Omaha, Nebraska, Wichita, Kansas, and Tulsa, Oklahoma. Its total personnel at the time of the hearing was approximately 773, of whom an estimated 150 are supervisors, managerial employees, or otherwise not in the unit. At the time of the hearing, the Kansas City plant had approximately 150 production and maintenance employees, the Wichita plant about 50, and

---

<sup>3/</sup> The transcript of testimony at the consolidated hearing in Cases Nos. 17-RC-4350, 4363, 4368 was received into the record without objection by any party herein as Employer's Official Exhibit No. 2. Those proceedings involved the Employer and the Intervenor herein, while the petitioners were certain other labor organizations seeking certification in separate units of certain employees of the Employer at Kansas City and St. Joseph, Missouri, and Omaha, Nebraska, respectively.

<sup>4/</sup> Association of Packers & Drivers Union was permitted to intervene on the basis of a contractual interest.

the Omaha plant some 20 to 25. The Tulsa facility, which was acquired by the Employer approximately two years prior to the hearing, and in which representation rights are not sought by the instant petitions, has an employee complement varying from four to eight employees. Goods produced at these facilities are sold by route salesmen either directly from the respective facilities or from various distribution depots throughout the Employer's sales area comprising several states. Overall direction of all operations and control of labor relations policies governing all employees is lodged in the Employer's president and sales manager, Guy Caldwell, who makes periodic visits to the Employer's various facilities and has periodic meetings with the respective employee groups.

Production and maintenance employees and warehouse personnel have the same fringe benefits in all facilities, and, with the exception of a historical wage differential existing in Wichita, all are paid the same hourly wage. The terms and conditions of employment of production and maintenance employees and warehouse employees at the Omaha, Wichita, and Kansas City facilities are arrived at through negotiations between the Intervenor and the Employer. Employee representatives from all three facilities here involved participate in negotiations with the Employer.

The Intervenor was certified on December 27, 1956, (Case No. 17-RC-2427) as the exclusive collective bargaining representative of all employees of the Employer,<sup>5/</sup> including route salesmen, but excluding office-clerical employees, route supervisors, guards and supervisors. At that time, there were approximately 120 employees in the unit, 75 of whom were in the Kansas City unit now sought. The remaining employees participating in that election were stationed elsewhere. Also at that time, the Wichita facility had approximately 10 employees engaged in sales, but none in production or maintenance. Production operations at Wichita began in 1957, and the Employer and the Intervenor bargained

---

<sup>5/</sup> The Employer was referred to in that proceeding as "Guy's Nut & Potato Chip Co."

for the additional employees there, including warehouse personnel, as part of the certified unit. The same procedure was followed when the Omaha operation was begun sometime in 1963.<sup>6/</sup> Truck maintenance is performed at the Kansas City, Omaha, and Wichita plants where the Employer's transport drivers are stationed, and at the Employer's St. Joseph, Missouri, warehouse.

Hourly paid warehouse employees are stationed at the Employer's facilities at Topeka and Emporia, Kansas; Oklahoma City and Tulsa, Oklahoma; Joplin, Springfield, Boonville, and St. Joseph, Missouri; and, Des Moines, Iowa. None of the Petitioners desires to represent any of these employees.<sup>7/</sup>

In view of the foregoing, and upon consideration of the entire record,<sup>8/</sup> I find that the factors present here make the units sought herein inappropriate. Due to the close central supervision of all facilities, substantial identity of wage scales and other working conditions, and the long bargaining history in an employer-wide unit, I conclude that the appropriate unit must be deemed to be one including substantially all employees of the Employer. Accordingly, I shall dismiss the petitions.

#### ORDER

IT IS HEREBY ORDERED that the petition(s) filed herein be, and they hereby are, dismissed.

Dated February 5, 1965  
at Kansas City, Missouri

Martin Sacks, Regional Director for  
the Seventeenth Region.

<sup>6/</sup> While the record is not clear on this point, it suggests that the Employer's production and maintenance employees stationed at the Tulsa facility were likewise brought under the existing contract.

<sup>7/</sup> The record also indicates that, within approximately the last year, the Employer has established two additional distribution depots at Ft. Dodge, Iowa, and Phillipsburg, Kansas, respectively. Again, it may be assumed that the employees at these two facilities have been included in the coverage of the collective bargaining agreement between the Employer and the Intervenor

<sup>8/</sup> Briefs received from the Employer and the Petitioner have been fully considered. The various contentions raised therein are disposed of in accordance with this Decision and Order. The Employer's refiled Motion to Dismiss Petitions has been acted upon as shown in note 2, above. I have been administratively advised that the Intervenor is not filing a brief.



Respondent's Exhibit No. 9

SPENCER, FANE, BRITT &amp; BROWNE

LAW OFFICES  
1000 Power & Light Building  
106 West 14th Street  
KANSAS CITY, MISSOURI 64105

\* \* \*

Area Code 816  
GRand 1-0848

March 12, 1965

Frank P. Barker, Jr.  
Jackson, Wade & Barker  
820 Home Savings Building  
Kansas City, Missouri 64106

Dear Mr. Barker:

We would strongly urge that the Agreement between the Association and Guy's Foods, Inc. not be submitted to the membership of the Union for approval pending processing of the matters now before the Board. There has really been no period of stability within which contract negotiations could be conducted and completed in peace. The insulated period has, in our case, been so reduced as to be meaningless. The purposes of the Act, which are to insure stability and the opportunity to negotiate collective contracts peacefully and in an atmosphere of unemotional consideration, have, in effect, been denied to the Association and the Company. In view of these circumstances and the pendency of the matters before the Board, we believe it would be best to wait until further action is taken.

Very truly yours,

/s/ James R. Willard

JRW:hm

---

Respondent's Exhibit No. 13

SPENCER, FANE, BRITT & BROWNE

LAW OFFICES  
1000 Power & Light Building  
106 West 14th Street  
KANSAS CITY, MISSOURI 64105

Area Code 816  
GRand 1-0848

June 7, 1965

Mr. Martin Sacks  
Regional Director  
National Labor Relations Board  
1200 Rialto Building  
Kansas City, Missouri 64106

In re: Guy's Foods, Inc. — Case No. 17-RC-4711

Dear Sir:

You will recall that on April 12, 1965, we wrote you requesting your opinion on the appropriateness of executing a collective bargaining contract between Guy's Foods, Inc. and The Association of Packers and Drivers Union. We pointed out that negotiations had been substantially completed prior to the filing of a petition by the joint petitioners. All that remained to be done was ratification by the Packers and Drivers and execution by the parties. We have been advised by the attorney for the Packers and Drivers Union that the agreement has been ratified by the Union and he demands that we execute the agreement and abide by its terms.

We have given careful consideration to this matter and recognize that your recent decision to recommend a hearing on the objections to the election held May 5, 1965, and won by the Packers and Drivers by a vote of 257 to 127 for the joint petitioners, makes it probable that no certification will issue for many months. Even your settlement proposals would require a new election, on or about September 1, 1965, and leave the door open for further delaying tactics. In the meantime, the employees of Guy's Foods are being deprived of substantial wage increases, retroactive to February 15, 1965, which they negotiated prior to the filing of the petition in this case.

The dilemma and confusion which presently exists was entirely predictable. That was the essence for the Company and the Association requesting the Board for an insulated period of time to conduct negotiations in peace after the petitions were dismissed in Cases 17-RC-4658, 4661, and 4662.

It is our opinion that the sense of the National Labor Relations Act requires us to live up to our bargain and not deny the employees its fruits indefinitely. Therefore, we again ask the consent of the Regional Director to the execution of the collective bargaining contract between Guy's Foods and the Packers and Drivers. We trust that the parties would have no objection to the paying of negotiated benefits. Such consent would not otherwise affect any charges or complaints before the Board but would only preclude reliance on the execution of the contract as evidence of unfair labor practices. It would be without prejudice to our other rights in this matter.

Very truly yours,

/s/ James R. Willard

JRW:hm

cc: Mr. Harold Richter  
Mr. Del Nabors  
Mr. Frank P. Barker, Jr.

---

Respondent's Exhibit No. 14

[Rec'd-June 15, 1965]

JACKSON, WADE & BARKER  
ATTORNEYS AT LAW  
820 Home Savings Building  
1006 Grand Avenue  
KANSAS CITY, MISSOURI 64106

\* \* \*

June 14, 1965

\* \* \*

Mr. Harry L. Browne  
Spencer, Fane, Britt & Browne  
1000 Power & Light Building  
Kansas City, Missouri

Re: Guy's Food, Inc. -- Association of  
Packers & Drivers Union

Dear Mr. Browne:

As attorney for the Association of Packers & Drivers Union we hereby make formal demand upon the company that the contract negotiated between us on February 14, 1965, and as later modified by agreement, be signed and the wage increases negotiated be paid.

From time to time we have made previous oral requests that the company pay the back wages due and are aware of certain charges and complaints filed against the company by a rival union. However, in view of the fact that the contract negotiated and the memorandum agreement signed on February 14, 1965 has now been wholly ratified by the membership of the Packers & Drivers Union, we must insist that the company carry its part of the bargain.

May I please hear from you at your earliest convenience.

Cordially yours,  
JACKSON, WADE & BARKER

/s/ Frank P. Barker, Jr.

FPB/Jr:mj

cc: Mr. Guy Caldwell

## Respondent's Exhibit No. 15

June 18, 1965

Frank Barker, Jr., Esquire  
Jackson, Wade & Barker  
820 Home Savings Building  
Kansas City, Missouri 64106

Dear Frank:

This will acknowledge receipt of your letter of June 14, 1965. As we have told you on earlier occasions, we are not sure of the propriety at this stage of either executing the agreement or paying back pay. The Company has, however, committed itself to paying this increase, and, as soon as it believes it can do so legally, it will make this payment retroactive to February 15, 1965.

On June 7, 1965, we requested the Regional Office of the National Labor Relations Board for advice, but to date we have not yet heard from the Board. In the meantime, the Company will see that the amount of wage increases agreed upon is segregated, so that in no event will the employees be prejudiced by the delay.

I am sorry that we cannot give you a more definitive answer at this time.

Best regards,

[/s/ Harry L. Browne]

HLB:bw

---



## Respondent's Exhibit No. 16

SPENCER, FANE, BRITT &amp; BROWNE

LAW OFFICES  
1000 Power & Light Building  
106 West 14th Street  
KANSAS CITY, MISSOURI 64105

Area Code 816  
GRand 1-0848

July 6, 1965

\* \* \*

Frank P. Barker, Jr., Esq.  
Jackson, Wade & Barker  
820 Home Savings Bldg.  
1006 Grand Avenue  
Kansas City, Missouri

Dear Frank:

This will supplement Mr. Browne's letter to you of June 18. We believe we are obligated by our promise to the employees and to put into effect the pay increases and economic benefits agreed upon. Retroactive pay will be paid as soon as the payroll office can make the necessary calculations and wages will be paid at the new rates effective at once.

You will recall that the promise of increased wages was made prior to any notice to the Company that a question of representation had been raised by petitioners. The contract which could have expired February 14, 1965, provided by its terms that it would continue in full force and effect until a new agreement was reached. An agreement was made on February 14, 1965, adopting the old agreement, with modifications, and a clarification agreement was entered into on March 1, 1965, while notice of the petition in case number 17-RC-4711 was not received until March 2, 1965. The Company promised, in its February 14 and March 1 agreements, to increase wages effective February 15, but with actual payment to be deferred until the employees ratified the agreement. Since the agreement has been ratified, we have no legal defense to a demand for payment. There is real doubt that a question of representation can affect our contractual obligations which could be enforced under Section 301 of the LMRA.

The February 14 and March 1 agreements will, of course, be fully effective when the representation question, if any, is disposed of.

Best regards,

/s/ Jim Willard

JRW:bw

cc: Mr. Martin Sachs

# TRIAL EXAMINERS DECISION

## Statement of the Case

This proceeding under Section 10(b) of the National Labor Relations Act (herein called the Act), involves three complaints, which have been consolidated for hearing and decision, and the Board's order of June 18, 1965, directing a hearing on certain issues involved in the representation proceeding, and that such hearing be consolidated with the unfair labor practice proceeding.<sup>1/</sup> In substance, the three complaints alleged that Guy's Foods, Inc. (herein called Respondent or Company), at various times threatened employees with loss of employment and other reprisals if they continued their activity in support of American Bakery and Confectionery Workers International Union, AFL-CIO (herein called Bakery Workers or Petitioner), or if they selected Bakery Workers as their representative; assisted, contributed support to, and interfered with the administration of Association of Packers and Drivers Union (herein called Association or Intervenor); granted a wage increase during the pendency of the representation proceeding for the purpose of influencing the choice of a bargain representative; and discriminatorily discharged Ina Faye Richardson because of her assistance to and support of Bakery Workers. In the representation proceeding, the issue is whether by conduct allegedly similar to and closely connected with the events involved in the unfair labor practice cases, Respondent engaged in conduct affecting the results of an election on May 5.<sup>2/</sup>

---

<sup>1/</sup> In Case No. 17-CA-2602, the complaint issued March 9, based on a charge filed January 15. In Case No. 17-CA-2632, the complaint issued April 9, based upon a charge filed March 10, amended April 8. In Case No. 17-CA-2675, the complaint issued July 2, based on a charge filed May 6. All dates mentioned are 1965 unless otherwise stated.

<sup>2/</sup> The chronology of events in the representation proceeding are:

February 26	Petition filed jointly by Bakery Workers and Teamsters' Joint Council No. 56.
April 1	Decision and Direction of Election.
April 12	Request for Review filed with the Board.

(Continued on next page)

Pursuant to notice, a hearing was held before the undersigned Trial Examiner at Kansas City, Missouri, on July 20 and 21, and at Wichita, Kansas, on July 22, all parties being represented by counsel and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant and material evidence, and to argue orally on the record. Oral argument was waived. Briefs submitted on behalf of the General Counsel, Respondent, Bakery Workers, and Association, respectively, have been received and duly considered.

Upon the entire record in this case, <sup>3/</sup> including my observation of the demeanor of the witnesses, I make the following:

---

<sup>2/</sup> (Continued from preceding page)

April 14	Supplement to Request for Review filed.
April 23	Board denies Request for Review as raising no substantial issues warranting review.
May 5	Election held. Tally of ballots disclosed that of approximately 470 eligible voters, 398 valid ballots were cast. Of these 127 votes were for the Petitioner; 257 for Intervenor; 5 against any participating labor organization; and 9 challenged ballots.
May 7	Objections to conduct affecting the results of the election filed by Bakery Workers.
June 2	Regional Director's Report on Objections.
June 8	Respondent's Exceptions to Regional Director's Report on Objections and Recommendations.
June 18	Board directs hearing on the issues raised by the Objections.

<sup>3/</sup> The General Counsel by Motion filed with me on September 7, and duly served on all parties in interest (a copy of which I have marked "Trial Examiner's Exhibit 1," and filed with the record), moves for the correction of the transcript of evidence in 32 particulars set forth in said motion. No opposition to this motion has been received. My examination of the transcript of evidence convinces me that the corrections requested by General Counsel are proper, and said Motion is now granted in its entirety.

Findings of Fact <sup>4/</sup>

## I. The unfair labor practices alleged

A. Background

Respondent is engaged in the production and wholesale distribution of potato chips, packaged nuts, and related products. Its principal office and plant is at Kansas City, Missouri, [with] branch plants and distribution centers in various midwestern cities. Total employment is somewhat under 800, with about 150 excluded from the unit as supervisory, managerial, or for other reasons. In December 1956, the Board certified Association, the Intervenor in the present representation proceeding, as the representative of all Respondent's employees, including route salesmen.<sup>5/</sup> In the years following this certification, Respondent and Association entered into successive contracts, including one on March 7, 1963, which was effective from February 15, 1963 to and including February 14, 1965, and thereafter from year to year unless terminated by prescribed notice.<sup>6/</sup> On November 27, 1964, Association gave Respondent appropriate notice terminating the then current contract, and requested negotiations for a new agreement. Through counsel, Respondent indicated its willingness to negotiate as requested, but suggested that such negotiations not be commenced prior to December 15, 1964.

---

<sup>4/</sup> No issue of commerce or labor organization is presented. The complaint alleges and the answer admits the facts which establish these matters. I find the facts as pleaded. No issue is raised in the instant proceedings with respect to the unit involved.

<sup>5/</sup> Excluded from the unit were office-clerical employees, route supervisors, and all statutory exclusions.

<sup>6/</sup> This contract covered all employees of Respondent in the aforementioned unit. A modification of this contract with respect to rates of pay, was effectuated as of February 15, 1964.

On December 10 and December 14, 1964, certain affiliates of Bakery Workers filed three representation petitions seeking certification as the representative of separate units of Respondent's employees at its Wichita, Kansas City, and Omaha, plants. Association intervened. After a hearing, the Regional Director concluded for reasons stated in his decision of February 5, that the only appropriate unit was one which included substantially all employees of the employer, and dismissed each of the aforementioned petitions. While these petitions were pending, Bakery Workers filed a charge in 17-CA-2602 on January 15, alleging that Respondent discharged Ina Faye Richardson on December 29, 1964, because of [her] support of Bakery Workers. Respondent received a copy of this charge on January 19.

Following dismissal of the aforesaid petitions, Respondent and Association negotiated for a new contract, but the period of such negotiations is not clear from the record. It does appear, however, that on February 14, they executed a new agreement effective "from February 15, 1965, to and including May 1, 1968," and thereafter from year to year, unless terminated by prescribed notice.<sup>7/</sup> The agreement of February 14 contained the following provision:

. . . It is understood that this agreement must be submitted to the membership of the Union for approval. If this agreement is not approved by the membership it shall terminate upon notice to the Company by the Union of such action by the membership. Wage increases shall be effective on February 15, 1965, but shall not be paid until the Union notifies the Company that this agreement has been approved.

---

<sup>7/</sup> The agreement also provided for reopening at stated times with respect to wages and certain fringe benefits. The agreement also incorporated by reference certain provisions of the old contract, particularly those with respect to recognition and the scope of the unit. On March 1, the parties executed a supplement to this agreement, the terms of which are not here material.



With respect to union security, the 1963 contract provided that employees who were members of Association when the contract became effective, be required to remain a member as a condition of continued employment, and that employees who were not members when the contract became effective, and new hires after the contract became effective, should become and remain members after 30 days from the effective date of the contract or after the date of hire in the case of new employees. The 1963 contract further provided that in those States where the aforementioned provisions may not lawfully be enforced, employees who do not acquire or maintain such membership within the 30-day period should pay to Association a monthly service charge; the service charge for the first month to be an amount equal to Association's usual monthly dues and initiation fees, and in months thereafter, Association's usual dues. The agreement executed February 14, 1965, provided for incorporation of the provisions of the 1963 contract, except to the extent specifically modified. Among the modifications in the 1965 agreement, was a provision that the Company would "at the time of hire" notify each "new employee of his obligation, where such exists, or right to become a member of [Association]" after 30 days and provide such employee with a check-off card and application for membership form, to be supplied by Association. Caldwell admitted that dues to Association was checked off from the wages of all employees in the unit since 1956, and that no charge was made with the execution of the 1965 agreement, or thereafter.

On February 26, Bakery Workers and Teamsters Joint Council No. 56, jointly, filed the petition which initiated the representation proceeding currently before the Board. Respondent admits that it received a copy of said petition on March 2.

#### B. The current facts

##### 1. The processing of the representation case

Respondent and Association, the latter having been permitted to intervene in the proceeding, urged dismissal of the petition in the pending

representation case, contending (1) that the collective-bargaining agreement executed February 14, constituted a bar to the petition; (2) that as a matter of policy, Respondent and the Intervenor should be entitled to a 6-month period from the dismissal of the petitions filed in December 1964, before the Board entertains another petition; (3) that Respondent and the Intervenor should be given "no less than a 60 day insulated period" to negotiate a contract to replace the one expiring on February 14; and (4) that the joint petitioners had no intention of bargaining jointly. On April 1, the Regional Director issued his Decision and Direction of Election, which discussed and rejected each of aforementioned contentions. With respect to the contract bar question, the decision states:

While it [the contract] is, by its terms to be effective February 15, 1965, it also specifically provided for its ratification by the membership of the [Association] and notification of the employer to this effect . . . it appeared from the record that such ratification has not taken place, either prior to the filing of the instant petition on February 26, 1965, or even prior to March 18, the date of the hearing in this matter. The law is clear that where, as here, the contract itself makes prior ratification by the membership a condition precedent to contractual validity, the failure to secure ratification renders the document no bar to an election. Appalachian Shale Products Co., 121 NLRB 1160. Moreover it is noted that the Employer and the [Association] found it necessary on March 1, 1965, to enter into a Memorandum of Clarification concerning the February 14, 1965, agreement.

On April 12, Respondent filed with the Board a Request For Review of the aforesaid Decision and Direction of Election which, in substance, urged the Board to sustain the contention advanced before the Regional Director in support of the motion to dismiss the petition. On April 23, the Board denied the Request For Review because "it raises no substantial issues warranting review." The election directed on April 1, was

held May 5, with the results stated supra, fn. 2.<sup>8/</sup> It is in the context of these events that the Section 8(a)(1), (2) and (3) allegations of the complaint must be considered.

## 2. Organizational events at the Wichita plant

### (a) Interference, restraint and coercion

As heretofore stated, since 1956 Association has been the certified and recognized representative of Respondent's employees in a multi-plant unit. In November 1964, when the then current contract between Respondent and Association was about to expire, Bakery Workers began its campaign to organize Respondent's employees. This effort appears to have had its inception with the employees in the Wichita plant. Among the Wichita employees who assisted Bakery Workers in this effort were Paul Seal,<sup>9/</sup> and Ina Faye Richardson. During the latter part of November 1964, Seal asked Kenneth Caldwell, Sr., general manager of the Wichita plant,<sup>10/</sup> to close down operations early to permit night shift employees to attend a union meeting the following Tuesday. Caldwell assumed that Seal meant a meeting of Association, and after posting a notice on the bulletin board to ascertain the wishes of the employees, agreed to and did suspend operations earlier than usual on the particular day to permit attendance at the meeting. The union meeting referred to was called, apparently by Seal, as a meeting of Association, but representatives of Bakery Workers were invited to, and did attend and speak at said meeting.

---

<sup>8/</sup> As the objections to the results of the election are based in part, on conduct also alleged to be violative of Section 8(a)(1), the details thereof, to the extent applicable, will be set forth in the section of this Decision dealing with such alleged violations. Additional facts, to the extent necessary, will be discussed separately.

<sup>9/</sup> Seal was at the time vice president and senior shop steward for Association's Wichita local.

<sup>10/</sup> Kenneth Caldwell, Sr., is a brother of Guy Caldwell, president of Respondent corporation.

The following day, Caldwell having admittedly learned that Bakery Workers had a part in the union meeting the preceding night, sought out Seal and told the latter that if he (Seal) had been half a man he would have told Caldwell what was going on. <sup>11/</sup> A week or so later, Caldwell told employee Golden, referring to Seal, "I would fire him but I don't have any reason" to do it. <sup>12/</sup>

Following the aforementioned union meeting, Doyle Alexander, an admitted supervisor, sought out employee John Peques, and asked the latter what the union meeting the previous night was about. Peques replied that he did not think Alexander should know. Several weeks later Alexander asked Peques if he had signed a card for Bakery Workers. When Peques admitted he had, Alexander stated that because of the Union (Bakery Workers), and the cards, no one was going to get a Christmas bonus. <sup>13/</sup>

About mid-December, employee Ina Faye Richardson had two conversations with admitted supervisors, concerning the Union. In the course of the first conversation with Supervisor Rolfe, the latter told Richardson, in the presence of other employees, that she (Rolfe) did not want her Christmas bonus taken away because of the Union. Later that day, Supervisor Alexander asked Richardson if she thought the CIO could help her. A few days later Rolfe approached Richardson at her duty station, and told the latter that if she wanted a raise she should have gone to Plant Manager Caldwell "instead of bringing in another Union." <sup>14/</sup>

---

<sup>11/</sup> Based on the credited testimony of Seal and the admission of Caldwell. The latter testified that while he did not recall making such a statement to Seal, "I probably did."

<sup>12/</sup> Based on the credited and uncontradicted testimony of Golden. Caldwell, testifying after Golden, did not deny the statement.

<sup>13/</sup> Based on the credited and uncontradicted testimony of Peques.

<sup>14/</sup> Based on the credited and uncontradicted testimony of Richardson.



### 3. The discharge of Richardson

On December 30, Richardson was discharged by Kenneth Caldwell, Sr., under circumstances which are not in serious dispute, and which may be summarized as follows. On December 29, after working about 3 hours, Richardson became ill and received permission to go home. She returned to work on December 30, and after working 8 1/4 hours, again became ill, clocked out and went to the front lounge to wait for two other employees to finish work, so she could get her ride home. When Richardson clocked out, production had ceased, but there remained the work of cleaning the machine.<sup>15/</sup> While Richardson was in the lounge waiting for her ride, Caldwell came in and asked her what she was doing sitting on "butt."<sup>16/</sup> When Richardson stated that she was not feeling well, Caldwell told her that if she did not feel better the following day, not to come to work. Caldwell then went into the plant, but admittedly returned in a few minutes and discharged Richardson. According to Richardson, Caldwell told her, "Hell, I am sick of fooling with you and don't come back to work no more." According to Caldwell he told Richardson, "we wouldn't need her any more."<sup>17/</sup>

Richardson had worked for Respondent a little over 19 months. She was, from the start of the movement, among the employees who sought to have Bakery Workers established as the bargaining representative of the employees, at least in the Wichita plant, and solicited authorization cards on its behalf. That her pro Bakery Worker<sup>s</sup> sympathies were known to Respondent is clear from her conversations with Supervisors Rolfe and Alexander. Moreover, even Caldwell admitted that he knew generally of the activity on behalf of Bakery Workers, and had he been called upon to

---

<sup>15/</sup> Employees doing the work Richardson was assigned to, work in crews of four to a machine. It is the duty of the entire crew, after production is finished, to clean their machine. However, the cleanup work can be performed by less than the entire crew.

<sup>16/</sup> Caldwell admitted that he asked Richardson why she had clocked out, but did not deny using the language Richardson attributed to him.

<sup>17/</sup> If Caldwell meant by his testimony to deny that he used the language attributed to him by Richardson, I find it unnecessary to resolve such conflict.



prepare a list of its supporters, his list would have included Richardson. Except to the extent hereafter mentioned, Richardson's work performance was not questioned.

Caldwell testified that Richardson's conduct in the plant had necessitated his warning her that another offense would result in her discharge. In support of this, Caldwell referred to the details of the following three incidents:

1. In the late spring or early summer 1964, another employee (Mrs. Jones), reported to Caldwell that Richardson was throwing potatoes into a bin in such a manner that Mrs. Jones "could possibly get hit with them." Caldwell talked with Richardson about this matter and according to Caldwell, Richardson explained she had not realized that what Mrs. Jones feared might in fact occur, and promised Caldwell that it would not happen again. <sup>18/</sup> According to Caldwell, sometime in June, Mrs. Jones quit saying she could not work under such conditions. At the time Mrs. Jones quit, Caldwell said nothing to Richardson, nor does he claim to have made any investigation to determine whether Richardson's conduct caused Jones to quit.

2. Apparently in mid or late summer, according to Caldwell, he went into the plant to see about a commotion that he heard, and observed a group of employees standing around watching Richardson who had a bag of potato chips in each hand, swinging her arms wildly and laughing; that Richardson, replying to his request for an explanation, stated that one of the employees had told her a funny story; that he called Richardson into the office and reprimanded her for disrupting production and told Richardson that this was her second reprimand, and that if it became necessary to speak to her again, she would be terminated. Richardson denied that this incident occurred, or that she was reprimanded on this occasion by Caldwell. In the view I take of this case, it is unnecessary to resolve this conflict.

---

<sup>18/</sup> Richardson admits this conversation with Caldwell.

3. On December 30, the day of Richardson's discharge, according to Caldwell, he was informed by Supervisor Rolfe, that when Richardson reported for work that day she asked to be assigned to a particular crew because she was sick, and that she (Rolfe) had told Richardson that if she was sick she should clock out, but that Richardson had insisted she was able to work the full shift; that after being away from the plant for 3 or 4 hours, he (Caldwell), returned to find Richardson at the time-clock, checking out; observing that other employees in the crew to which Richardson had been assigned were still working, he asked Richardson why she had clocked out, and after Richardson stated she was ill, he told her that if she were sufficiently well to work 8 1/4 hours, she should be able to work the additional 30 minutes or so that was required to clean the machines. Caldwell admits that at this time, he told Richardson that if she did not feel well the next day, not to come to work. According to Caldwell, he then went out to the plant and thought about the two occasions that he had reprimanded Richardson, and his warning to her that if a reprimand ever again became necessary she would be discharged; that he then concluded that fairness to the other employees required that Richardson be terminated, and that he then returned to the lounge where Richardson was waiting, and discharged her. <sup>19/</sup>

#### 4. Subsequent Section 8(a)(1) activity at Wichita

During work on January 14, employee Paul Seal, told Plant Manager Caldwell that he (Seal) was being subpoenaed by Bakery Workers to attend the hearing on January 15, in the representation cases then pending, and which were thereafter dismissed, and sought permission to be absent from work and obey the subpoena. Caldwell asked to see

---

<sup>19/</sup> At the hearing, Respondent amended its answer to aver, and the General Counsel admits, that on July 7, Richardson was offered unconditional reinstatement to her former position, which she accepted, and that it was agreed that she would return to work on July 26.

the subpoena. At the time Seal had not yet received the subpoena, but promised to bring it to Caldwell's home that evening.

Sometime after 9 p.m. Seal received the subpoena and went to Caldwell's home to show it to him. When Seal exhibited the subpoena, Caldwell asked Seal "how [he] got mixed up in this [Union] business." Later in the conversation Caldwell told Seal that he evidently did not know what the word "no" meant, and added, "You know, if this Union don't go through you are not going to work for me any more."<sup>20/</sup>

#### 5. Events at Kansas City on March 4 and 5

As above stated, Respondent and Association executed a contract on February 14, to replace the contract expiring on February 15. The new contract contained the provision quoted supra p. 4, with respect to ratification and payment of the wage increases therein provided. On February 26, the joint representation petition by Bakery Workers and Teamsters, resulting in the election involved, was filed, and a copy thereof was admittedly received by Respondent on March 2.

On March 4, employee Bernardi, then president of Association, received a telegram signed by Harold Richter, international representative of Bakery Workers, reading:

ANY ACTION TAKEN ON CONTRACT NEGOTIATIONS  
AFTER FRIDAY, FEBRUARY 26, 1965, IS ILLEGAL  
AND WILL RESULT IN UNFAIR LABOR CHARGES.

The following morning, in the presence of a number of employees, Bernardi, who was then on her way to the coffee shop, asked Guy Caldwell for permission to put the telegram on the bulletin board where Association material was occasionally posted. Caldwell gave his permission, but then followed Bernardi into the coffee shop and asked to see the telegram. After reading it, Caldwell told Bernardi she could not post it on the bulletin board "because it wasn't true." Bernardi explained that her reason for wanting it posted was that she had received

---

<sup>20/</sup> Based on the credited and uncontradicted testimony of Seal. Caldwell, although testifying for Respondent, did not deny this statement.

a number of calls about the telegram from fellow employees who insisted it was union business and that they should be advised of it. Caldwell adhered to his decision that the telegram could not be posted, and told Bernardi that if she received any other material relating to the employees' jobs, she should advise him (Caldwell), or fellow employee Maggie Sandifer, about it.<sup>21/</sup>

On March 4 or 5, certain employees favorable to Association circulated a petition among the employees asking Respondent to permit a meeting of employees at the plant to consider the contract which Respondent and Association reached on February 14. The petition was circulated principally by Sandifer. The latter's testimony makes it clear that the petition was circulated on company property, and to some extent on company time, although in the main during nonwork hours. In any event, there is no evidence to establish that Respondent instigated the petition, or was aware of its existence until it was presented to Guy Caldwell on March 5. As a result of this petition a meeting was held in Caldwell's office on March 5, attended by employees Inna Adams, Maggie Sandifer, Lucille Bernardi, Loral Michaels, Lovelle Smith, Bob Murphy, and Charles Thompson, as well as by Management Representatives Guy Caldwell, his wife Frances Caldwell, and his brother Newell Caldwell. While the evidence is conflicting as to some of the events at this meeting, I find it unnecessary to resolve such conflicts because there are admitted events to furnish a sufficient basis for decision.

According to Lucille Bernardi, the meeting opened with Caldwell stating that he wanted to get the contract negotiated with Association, ratified and out of the way. When Bernardi stated that as president of

---

<sup>21/</sup> Based on the credited testimony of Bernardi. Caldwell admitted that he first gave Bernardi permission to put the telegram on the bulletin board, and later revoked this permission. Caldwell explained that his reason for revoking the permission he had given was that Bernardi had represented that the telegram was from the Board, and that he subsequently learned that statement was not a fact. Caldwell did not deny that he read the telegram, or that he told Bernardi that in the future matters of such nature should be reported to him or to Sandifer.



Association she was unable to do anything about the contract because of the telegram she received from Bakery Workers, Caldwell replied that the telegram was untrue and directed his office girl to place a call to Barker, attorney for Association. Bernardi testified that when the call came through, Caldwell went into an adjoining room, and after a period of time returned and said that Barker wished to talk with Bernardi.<sup>22/</sup> While the employees were waiting for the call to Barker to go through, both Caldwell and his wife talked to the employees. Mrs. Caldwell, speaking to the employees generally, stated that for their education and qualifications they were "making plenty of money"; that they should "get this over with and think about getting money into profit sharing"; that the "people that aren't happy that don't do anything but cause trouble, why don't [they] quit." Then directing her remarks to Bernardi, Mrs. Caldwell said, "There are plenty of jobs. Get your husband to get you a job." When Bernardi replied that she was happy, Guy Caldwell stated, "Don't sit there and lie to me. If you are so damned innocent, why were you at that hearing."<sup>23/</sup> Bernardi explained that she attended the hearing because she was told that she would be subpoenaed. To employee Bob Murphy, Mrs. Caldwell said, "If you are dissatisfied you should get yourself another job someplace else. You might as well start looking

---

<sup>22/</sup> Caldwell admitted that the meeting was held in his office. He testified that the employees asked for permission to hold a meeting of Association on company property, and that he agreed if his counsel and counsel for Association, approved. He admitted that he placed a call to Barker, but claimed that he did so at the request of employee Adams, to find out if a meeting of Association could legally be held. Caldwell testified that he discussed nothing with Barker, simply telling the latter that Bernardi wished to speak with him. It is significant that although Caldwell claimed he agreed to the requested meeting if approved by his attorney, he did not testify that he communicated with his counsel about the matter.

<sup>23/</sup> This reference was to the hearing on January 15, in the prior representation case dismissed by the Region.



someplace else." <sup>24/</sup> It was at this point that Guy Caldwell was informed that his call to Barker had been completed, and after talking to the latter for some undisclosed period of time, Caldwell told Bernardi that Barker wished to talk with her. Bernardi informed Barker that she regarded a meeting of Association that afternoon as improper, because no notice thereof had been given the employee members. According to Bernardi, Barker told her that such a meeting would not be improper. <sup>25/</sup> Returning to the room where the employees and the Caldwells were, Bernardi was told by employee Sandifer that she (Bernardi) was "outnumbered," that the people wanted a meeting that afternoon. Caldwell admits that at this point he granted permission for a meeting of the employees to be held that afternoon.

The events transpiring at the meeting of employees during the afternoon of March 5, are in dispute, but again I find it unnecessary to a decision that such conflicts be resolved. There is no dispute about the fact that the meeting convened about 1 p.m., in what may best be described as a warehouse building owned by Respondent, located across the street from the main plant where most, if not all the production employees work. Also undisputed is the fact that Guy Caldwell directed that plant operations be suspended to enable the employees to attend the meeting, and that employees were paid for the time they were in attendance at such meeting. It is also conceded, that this was the first occasion that a union meeting had been held during working hours. At least one witness testified that when she reported for work at about

---

<sup>24/</sup> Mrs. Caldwell did not testify. Guy Caldwell admitted that Mrs. Caldwell first addressing the employees generally, and then specifically addressing Murphy, stated that if the employees were unhappy, they could seek employment elsewhere. He also admitted the conversation with Bernardi, but claimed such conversation related to the latter's absence from work 2 or 3 days before. I do not credit this explanation.

<sup>25/</sup> Barker, who appeared as counsel for Association, did not testify.

1:30 p.m., Supervisor Newell Caldwell directed her to punch in and go across the street to the meeting. <sup>26/</sup> It is undisputed that after the meeting convened in the warehouse, some 20 to 25 employees, apparently dissatisfied with what was going on, left the meeting and returned to their respective duties in the plant. When they began work Guy Caldwell told them, "You better go back over there and vote or else, and if you don't you will never have a chance to vote again." According to at least one witness, Guy Caldwell was "very angry" at the time, and that his directive to return to work was "shouted." <sup>27/</sup> These employees then returned to the meeting and remained there to its conclusion. The evidence is also uncontradicted that Plant Superintendent Bacon and Supervisor Newell Caldwell told these employees to go back to the meeting and vote.

About a week following the aforementioned meeting of March 5, the evidence shows two instances of employee interrogation and threats by supervisory personnel. Thus, Plant Superintendent Bacon told employee Cameron that if he voted for Bakery Workers, "you might not get any overtime." The same day Bacon told employee Hamilton that he had "definite information" that Hamilton was passing out union cards, and added that "if the ABC Union got in that would really mess the plant up; [there] wouldn't be any more overtime." <sup>28/</sup>

---

<sup>26/</sup> Although the record shows Newell Caldwell was present in the hearing room, he was not called as a witness and the foregoing testimony is uncontradicted.

<sup>27/</sup> Caldwell admitted that when these employees left the meeting and returned to the plant, he told them "... the meeting was to be held and they had an opportunity to vote; if they wanted to vote they should go across the street." Although Caldwell would not admit that he was angry when he made this statement, he did admit that he "was excited," and that he spoke "loudly" because he wanted the employees to know that they had the opportunity to vote if they wished to do so. As I have stated, I do not regard the conflict as sufficiently material to require resolution.

<sup>28/</sup> Based on the credited and uncontradicted testimony of Cameron and Hamilton, Bacon did not testify. Hamilton also gave testimony regarding an alleged conversation with Supervisor Newell Caldwell. I find his testimony regarding this incident confusing, and for that reason make no findings with regard thereto.

## 6. Other events prior to the election

Following the direction of election on April 1, and the Board's denial of Respondent's Request of Review on April 23, the election among Respondent's employees was scheduled for May 5. Immediately prior to the election Respondent engaged in conduct at its Kansas City and Wichita plants allegedly violative of Section 8(a)(1) and affecting the results of the election.

### (a) At Kansas City

On May 3, Soloman, an admitted supervisor, asked employee Pardoe, who was wearing a Bakery Workers badge, whether she was going to vote for Bakery Workers, adding, "If you had a lick of sense you would take the ABC sticker off and put a Packers and Drivers sign on." Later that day, Soloman asked Pardoe if the latter knew "how the rest of the people were voting." Pardoe replied that she knew how some employees would vote, but would not give this information to Soloman. Also, about the same period Soloman asked employee Mealy why the latter was wearing an ABC button instead of an Association button, and asked "Why do you hate the Company?" When Mealy replied that she had nothing against the Company, that it was simply a matter of money, Soloman added, "Oh, no, its better to be loyal; loyalty is better than money." <sup>29/</sup>

### (b) At Wichita

A week or two prior to the election, Supervisor Rolfe told employee Thompson that she thought Caldwell would sell out or close the plant if ABC came in, and that the employees would probably lose their overtime. Just prior to the election Rolfe also, after asking employee Thompson if he was trying to put the Company out of business,

---

<sup>29/</sup> Based on the credited and uncontradicted testimony of Pardoe and Mealy.

took an Association badge which she had been wearing, and pinned it on Thompson. <sup>30/</sup>

Guy Caldwell admitted that on May 4, he transported from Kansas City to Wichita, a package of hand lettered signs reading "Vote for Packers and Drivers Union." Although Caldwell testified that he was not aware of what was in the package when he transported it to Wichita, he admitted that he discovered the nature of the material when he reached Wichita, and that he then gave the signs to his brother Kenneth Caldwell, Sr., to distribute among the employees. Guy Caldwell also admitted that on May 4, he permitted Helen Fraley, a supervisory employee at the Wichita plant, to wear one of said signs for about 2 hours. Employee Draper asked Fraley, while the latter was wearing the sign, why she did so when she was not a member of Association. Fraley replied that Caldwell told her she could wear it. The evidence shows that Kenneth Caldwell, Jr., an admittedly supervisory employee, also wore one of these signs in the plant on May 4, that he told employee Tibbits to get some of the signs and distribute them in the plant, and pinned two of the signs on Tibbits' back. <sup>31/</sup>

## 7. The election

At the Kansas City plant, certain employees of Respondent acted as election observers on behalf of Association and Bakery Workers, respectively. Respondent concedes that on May 14, the next regular payday, it paid the observers on behalf of Association for their time

---

<sup>30/</sup> The incidents above found involving Thompson and Rolfe, are based on credited and uncontradicted testimony of Thompson. Thompson also testified that just prior to the election Supervisor Alexander told him that Caldwell would sell the plant if ABC came in. This testimony came in only as the result of the General Counsel's leading questions, and for that reason I make no findings with respect to that incident.

<sup>31/</sup> Based on the admissions of Guy Caldwell, and the evidence of Draper and Tibbits. Neither Fraley nor Kenneth Caldwell, Jr., testified.



so spent, but observers on behalf of Bakery Workers, were not paid for such time until May 27. The payroll clerk testified that the failure to pay the Bakery Workers' observers was not intentional, but arose because those employees did not punch the timecards, and for that reason she assumed they had not worked, but when the facts were brought to her attention they were, except in one instance, paid the next payday. <sup>32/</sup> There is no evidence to refute the testimony of the payroll clerk that the failure to pay the observers for Bakery Workers on May 8, was other than an inadvertance. <sup>33/</sup>

#### 8. Events subsequent to the election

As heretofore stated, the contract between Respondent and Association executed February 14, provided for wage increases retroactive to February 15, when the contract was ratified. <sup>34/</sup> By letter dated June 14, counsel for Association advised counsel for Respondent that the

<sup>32/</sup> The one instance was in the case of employee Elva Jones who, when the other employees were paid, was on sick leave and had not returned to work at the time of the hearing. The testimony of the payroll clerk is that when Jones returns to work she will be paid for the time spent as an election observer.

<sup>33/</sup> In addition to the foregoing, Bakery Workers contends that in view of the events preceding the election, all as set forth above, the election of May 5, should be set aside because (1) the polling booths were set up in close proximity to the timeclock where employees received employer election propaganda that morning, and in an open work area close to the coffee shop, where supervisors went during the voting; and (2) that the inside of the polling booth could be observed from a catwalk about which was only partially covered by cardboard. The uncontroverted testimony is that all of these objections were called to the attention of the Board's agent in charge of the election, and that the Board agent found it unnecessary to take steps to cure the aforementioned objections. However, I deem it unnecessary to make findings with respect to these allegations, because for other reasons hereafter set forth, I conclude that the election of May 5 should be set aside.

<sup>34/</sup> The contract provision is quoted supra, p. 4.



contract negotiated and signed February 14, "has now been wholly ratified by the membership of the Packers & Drivers Union," <sup>35/</sup> and in view of that fact demanded that said agreement "be signed and the wage increases negotiated be paid." By letter dated July 6, Respondent's counsel advised counsel for Association that as it felt bound by the obligations it assumed in the aforementioned contract, the increased rates of pay would be made "effective at once," and that the retroactive wages would be paid as soon as the payroll office could do so. Such payments were in fact made on July 9, for those employees paid out of Kansas City, and a week later for those paid out of Wichita.

## II. Concluding findings

On the foregoing facts, I find and conclude that Respondent violated the Act in the following particulars:

### A. The independent Section 8(a)(1) violations.

(1) Kenneth Caldwell's statement to Seal that if the latter were half a man he would have told Caldwell that the meeting in late November 1964, was not a meeting of Association, as well as the statements immediately thereafter by Supervisors Rolfe and Alexander to employees Peques and Richardson, as set forth in section IB2, above.

(2) Kenneth Caldwell's statement to Seal, set forth in section IB4 above, that Seal would not be working for Respondent if Bakery Workers did not become the representative of the employees.

(3) The statements by Guy Caldwell and his wife at the meeting in Caldwell's office on March 5, to the effect that employees who were not happy should quit or get another job, as well as Caldwell's statement to Bernardi concerning the latter's assistance to Bakery Workers, all as set forth in section IB5 above.

(4) The statements to employees Pardoe and Mealy by Supervisor Solomon, as set forth in section IB6(a) above.

<sup>35/</sup> The testimony, in conclusionary form, is that such ratification was on May 12. The testimony however, does not show the circumstances under which such alleged ratification took place, nor the facts upon which such conclusion is based.

(5) The statement of Supervisor Rolfe to employee Thompson that she thought Caldwell would sell the plant if Bakery Workers got in, and that in that event, the employees would probably lose their overtime, as set forth in section IB 6 (b) above.

(6) The wearing of Association badges in the plant by Supervisors Kenneth Caldwell, Jr., and Helen Fraley, and the pinning of Association badges on employees Thompson and Tibbits, by Supervisors Rolfe and Kenneth Caldwell, Jr., as set forth in section IB 6(b), above.

(7) By placing into effect on July 9 and July 16, the wage increases provided for in the agreement of February 14, retroactive to February 15, as set forth in section IIB8 above. Although these increases were made effective after the election, and allegedly because of Respondent's contract obligation, the fact remains they were granted at a time when the objections to the election had been filed. In this posture the possibility of a new election was real, and a wage increase at such a time was no more than a reward to the employees for having rejected Bakery Workers at the May 5 election, and an inducement to do so again should a new election be held. See Northwest Engineering Company, 148 NLRB 1136, 1145.

#### B. The Section 8(a)(2) violations

Section 8(a)(2) of the Act to the extent here material, makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . . ." In giving effect to this statutory provision, the Board has consistently held that an employer faced with conflicting claims of representation by rival unions, has the obligation of maintaining absolute neutrality, and while an employer may express his personal preference for one of the competing unions, any conduct on his part which accords unwarranted prestige to one of the rival unions, or which encourages or discourages membership therein, constitutes unlawful assistance violative of Section 8(a)(2) of the Act. Midwest Piping & Supply Co., Inc. 63 NLRB 1060, 1069-1071.

The General Counsel urges that the Regional Director's dismissal, on February 5, of the initial representation petitions because the units sought were inappropriate, and the subsequent filing of the representation petition for the appropriate unit on February 26, under the circumstances here present, put Respondent on notice that a rival valid question concerning representation existed, and that its conduct on March 5, and immediately preceding the May 5 election, as well as by the wage increases paid July 9 and 16, retroactive to February 15, all as set forth above, Respondent breached its obligation of neutrality, and gave unwarranted prestige to Association, discouraged membership in Bakery Workers, and thereby violated Section 8(a)(2) and (1) of the Act.

Respondent, on the other hand, urges that when the contract of February 14, was executed, it had no notice of, nor any reason to anticipate a rival claim of representation, and was, therefore, legally entitled to contract with Association. From this premise Respondent argues that assuming the correctness of the Regional Director's decision, affirmed by the Board, that the contract of February 14, was not a bar to the representation petition filed on February 26, it was nonetheless a valid contract which, under the Board's holding in Shea Chemical Corporation, 121 NLRB 1027, 1029, Association was entitled to continue administering in accordance with its terms, and with which Respondent was required to comply, even assuming that in doing so it violated Section 8(a)(1). The conduct urged by the General Counsel to constitute unlawful assistance proscribed by Section 8(a)(2), Respondent urges, relying upon B. M. Reeves Company, 128 NLRB 320, to be no more than the usual cooperation normally expected to exist between an employer and the duly designated representative of his employees.

It is quite true that when Respondent negotiated and signed the agreement of February 14, it had no actual notice, nor were the facts sufficient to put it on notice that Bakery Workers had any interest in the multi-plant unit which the Regional Director held to be the only one appropriate. For that reason, the Board's Mid-West Piping rule afforded

no impediment to Respondent and Association agreeing upon contract terms. Had their agreement been ratified by Association before February 26, when the petition by Bakery Workers was filed, Respondent could have continued to deal with Association as the representative of its employees. But as the Board held, by declining to review the Regional Director's decision of April 1, the agreement of February 14, did not result in a binding contract because the provision for ratification was not complied with prior to the filing of the representation petition on February 26; indeed such ratification had not occurred when the election was directed, or even when it was held. The Board's holding in this regard, irrespective of my own opinion as to its correctness, precludes me from giving any consideration to the question whether that issue was correctly decided, as Respondent contends I should. <sup>36/</sup>

Bound, as I am, by the Board's decision that the agreement of February 14, did not result in a binding contract prior to the filing of the instant petition, and notice thereof to Respondent, it follows that the rule of Mid-West Piping, supra, placed Respondent under the duty to refrain from giving assistance to Association, or promoting the latter's prestige in the eyes of the employees. That Respondent failed in this duty is clear on this record. Its efforts on March 5, to bring about ratification of the contract with Association by permitting the latter to hold its meeting on company property, during working hours, and paying employees for the time so spent; urging employees to attend such meeting; checking of dues to Association from the wages of its employees; distributing badges shortly before the May 5 election, urging employees to vote for Association; permitting supervisors to wear such

---

<sup>36/</sup> Section 102.67(f) of the Board's Rules and Regulation (29 C.F.R. 102.67(f), providing for review of decisions made by regional directors in representation cases, provides, in pertinent part:

Denial of a request for review shall constitute an affirmation of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.



badges in the plant; and the conduct of supervisors pinning such badges on employees while they were at work; and other conduct heretofore set forth in more detail, constituted that assistance to Association which is proscribed by Section 8(a)(2) of the Act. I so find and conclude. <sup>37/</sup>

### C. The Section 8(a)(3) violations

It is of course, settled law that an employer may, without violating Section 8(a)(3) of the Act, discharge an employee for any reason, or for no reason, so long as the discharge is not for the employee's concerted activity. The problem here is simply determining Respondent's motive for discharging Richardson. On the entire record, I find and conclude that Richardson was discharged on December 30, 1964, because of her assistance to and support of Bakery Workers, and not, as claimed by Caldwell, because it became necessary to speak to her for a third time about her improper work performance. I am persuaded to this conclusion by the following factors.

1. The evidence shows that Richardson was from the start of the organizational activity by Bakery Workers, among the latter's active supporters in the Wichita plant.

2. Respondent was aware of her sympathy for and support of Bakery Workers, evidence the fact that she was interrogated, as set forth above, by supervisors as to what benefit she thought Bakery Workers would be to her, and why she did not go to plant manager Caldwell with any complaint she might have, "instead of bringing in another Union."

---

<sup>37/</sup> The evidence I find and conclude, does not support the contention by Bakery Workers that Respondent's conduct constitutes domination requiring disestablishment of Association, within the Board's rule stated in Carpenters Steel Company, 76 NLRB 670, 673. Notwithstanding the refusal of the General Counsel to take any position on the question, I have found and concluded, as contended by Bakery Workers that the checking off of dues to Association, from the wages of employees, after March 2, constituted assistance to the latter which is proscribed by Section 8(a)(2) of the Act. I do not regard this to be inconsistent with the theory of the case pleaded by the General Counsel; it is merely an additional ground for reaching the same legal conclusion which the General Counsel urges.



Moreover, Plant Manager Caldwell admitted that he was generally aware of the organizational activity by Bakery Workers, and if he had to prepare a list of its supporters, such list would include Richardson.

3. The events at the Wichita and Kansas City plant, both before and after Richardson's discharge, leave no room for doubt that Respondent was opposed to Bakery Workers as the representative of its employees.

4. Although Caldwell calimed that the immediate cause of Richardson's discharge on December 30, was her failure to work with her crew until the cleaning of the machines had been completed, it is significant that he did not so state to Richardson when he spoke to her in the lounge. On the contrary, his only statement to her at that time was that if she did not feel well the next day, not to come to work, thus plainly indicating that at that point he did not regard her conduct such as to warrant reprimand or discharge. Caldwell admitted that after thus speaking to Richardson, he went into the plant for a few minutes thought about the other two occasions that he had talked to her about her work, concluded that fairness to his other employees required that she be terminated, and returned to the employee lounge where he discharged her. In view of the fact that it had been at least 4 months since he last spoke to Richardson about her work performance; that the matter involved was not of the same nature as caused him to speak to her on the prior occasions; that on the day in question production had ceased when Richardson clocked out, and that Caldwell's only complaint could have been that Richardson did not participate in cleaing the machines; and that Caldwell did not so inform Richardson when he first spoke to her in the lounge, I can only conclude that Richardson's failure to work until the machines were cleaned was not the motivating cause of her sudden termination, but was a mere pretext seized upon in an attempt to obscure the fact that Caldwell thought this was the opportunity to rid himself of a strong supporter of Bakery Workers. I so find and conclude.

### Conclusions with Respect to the Objections to the Election

Having found that Respondent engaged in conduct proscribed by Section 8(a)(1) of the Act, most of which occurred during the "critical" period,<sup>38/</sup> it follows that the election held on May 5, must be set aside. See Leas & McVitty, Incorporated, 155 NLRB No. 43, and the cases therein cited. Accordingly, it becomes unnecessary to decide whether the other conduct relied upon by Bakery Workers, set forth in section IIB8, above, affected the results of the election.

### III. Conclusions of law

1. Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Association and Bakery Workers are labor organizations within the meaning of Section 2(5) of the Act.
3. By the conduct referred to in section IIA paragraphs (1) through (7) above, Respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, and thereby engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By the conduct referred to in section IIB, above, Respondent interfered with, assisted, and contributed support to Association, and thereby engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

---

<sup>38/</sup> The critical period under Board rules, is from February 26, the date the representation petition was filed, to the date of the election. See Ideal Electric and Manufacturing Co., 134 NLRB 1278. The only conduct found violative of Section 8(a)(1) which did not occur during the critical period, were the events in the fall of 1964, and the wage increases made effective in July.

5. By discharging Ina Faye Richardson, under the circumstances and for the reasons found in section IIe above, Respondent discriminated against the tenure of her employment, and the terms and conditions thereof, to discourage membership in Bakery Workers, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Except to the extent that violations of the Act have been specifically found herein, the preponderance of the evidence fails to establish that Respondent engaged in other violations of the Act, and it will be recommended that the allegations of the complaint to that extent, be dismissed.

#### The Remedy

Having found that Respondent engaged in unfair labor practices as heretofore set forth, it will be recommended that it cease and desist therefrom and take the affirmative action set forth below, found necessary and designed to effectuate the policies of the Act.

It having been found that Respondent interfered with, coerced and restrained its employees in the exercise of rights guaranteed to them by Section 7 of the Act — one of the basic purposes the Act was designed to achieve — I conclude from the totality of the proscribed conduct in which Respondent is found herein to have engaged, that I shall recommend that Respondent be required to cease and desist from in any manner interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act. N.L.R.B. v. Entwistle Mfg. Co., 120 F.2d 532 (C.A. 4); California Lingere, Inc., 129 NLRB 912, 915.

Although I have found that Ina Faye Richardson was discriminatorily discharged by Respondent on December 30, 1964, I do not recommend a reinstatement order because, as the General Counsel concedes, Respondent has made a valid and unconditional offer of reinstatement to her. I shall however, recommend that Richardson be made whole for any loss of

earnings she may have suffered by reason of the discrimination against her, by paying to her a sum of money equal to the amount she would have earned between December 30, 1964 and the date of her reinstatement, less net earnings during said period. Backpay with interest at the rate of 6 percent per annum, shall be computed in accordance with Board policy set forth in F. W. Woolworth Company, 90 NLRB 289, and Isis Plumbing & Heating Co., 138 NLRB 716. It will also be recommended that Respondent be required to preserve, and on request make available to agents of the Board all records necessary or useful in computing the amount of backpay due, as herein provided.

It has been found that Respondent, as above set forth, interfered with the administration of and contributed support to Association during the pendency of a question concerning representation of its employees. It is not possible to determine or evaluate the part Respondent's assistance to Association played in the results of the May 5 election, or the ratification of the contract, after the election. In order, therefore, to effectively remedy Respondent's unfair labor practices, I shall recommend that it be required to withdraw and withhold from Association all recognition as the collective-bargaining representative of its employees, and to cease giving any effect to the agreement negotiated with Association on February 14, unless and until Association shall have been certified by the Board as exclusive majority representative of Respondent's employees. <sup>39/</sup>

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c)

---

<sup>39/</sup> Bakery Workers, but not the General Counsel, contends that as part of the remedy, Respondent and Association should be required to reimburse the employees for all dues checked off from their wages. I reject this contention because, in my view, a sufficient predicate for such relief has not been established. See N.L.R.B. v. Local 60, United Brotherhood of Carpenters, etc., 365 U.S. 651.



of the National Labor Relations Act, as amended, it is recommended that Guy's Foods, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Threatening employees with plant closure or loss of overtime if they assist or support American Bakery and Confectionery Workers International Union, AFL-CIO, Local 245, or any other labor organization.

(b) Discharging or threatening to discharge any employee because of assistance to or support of the above-mentioned or any other labor organization.

(c) Granting wage increases to employees as an inducement to withhold assistance to or support of the above-mentioned or any other labor organization.

(d) Coercively interrogating employees concerning their membership in, views about, or activities on behalf of any labor organization.

(e) Discouraging membership in or activities on behalf of the above-mentioned or any other labor organization of its employees, by discriminatorily discharging, or otherwise discriminating against any employee in regard to the hire, tenure or any term or condition of employment.

(f) Assisting, contributing support to, or interfering with the administration of Association of Packers and Drivers Union, or any other labor organization of its employees.

(g) Recognizing or contracting with Association of Packers and Drivers Union, as the collective-bargaining representative of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of such employees.

(h) Giving any force or effect to its agreement dated February 14, 1965, with Association of Packers and Drivers Union, or any



extension, renewal, modification or supplement thereof, or to any superseding contract, unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of such employees; provided, however, that nothing herein shall be construed as requiring it to withdraw, change or abandon any of the terms and conditions of employment currently enjoyed by its employees.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the aforementioned or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action found necessary to effectuate the policies of the Act:

(a) Make whole Ina Faye Richardson for any loss of earnings suffered by her, during the period, and in the manner set forth in the section hereof entitled "The remedy."

(b) Preserve and upon request make available to agents of the National Labor Relations Board, for inspection and copying, all payroll records, social security records, timecards, personnel records, reports, and all other records necessary or useful in computing the amount of backpay due Ina Faye Richardson, as herein provided.

(c) Withdraw and withhold all recognition from Association of Packers and Drivers Union, as the collective-bargaining representative of its employees, unless and until said labor organization has been certified by the National Labor Relations Board as the exclusive representative of such employees.

(d) Post at each of its plants copies of the notice attached

marked "Appendix."<sup>40/</sup> Copies of said notice to be furnished by the Regional Director of the Seventeenth Region of the National Labor Relations Board (Kansas City, Missouri), shall, after being signed by its authorized agent, be posted immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of receipt of this Decision what steps it has taken to comply herewith.<sup>41/</sup>

(f) All allegations of the complaint not herein found to constitute violations of the National Labor Relations Act, as amended, be, and the same are dismissed.

IT IS FURTHER RECOMMENDED, that the election held on May 5, 1965, in Case No. 17-RC-4711, be set aside, and that said case be remanded to the Regional Director for the Seventeenth Region of the Board, with directions to conduct a new election at such time as he deems circumstances to permit the employees to freely choose a bargaining representative.

Dated at Washington, D. C. January 7, 1966.

/s/ Joseph I. Nachman  
Trial Examiner

---

<sup>40/</sup> If this Recommended Order is adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in such notice. If this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "A DECISION AND ORDER," the words "A DECREE OF A UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

<sup>41/</sup> In the event that these Recommendations are adopted by the Board this provision shall be modified to read: "Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

---

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE  
NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT  
(AS AMENDED)

we hereby notify our employees that:

WE WILL NOT threaten our employees with plant closure or loss of overtime if they assist or support Bakery Workers or any other union.

WE WILL NOT discharge any employee for assistance to or support of Bakery Workers, or any other union.

WE WILL NOT grant wage increases to our employees to induce them to cease supporting or assisting Bakery Workers, or any other union.

WE WILL NOT coercively interrogate any employee concerning his or her membership in, views about, or activities on behalf of any union.

WE WILL NOT discourage membership in or activities on behalf of any union of our employees by discriminatorily discharging, or otherwise discriminating against any employee in regard to his or her hire, tenure or term or condition of employment.

WE WILL NOT interfere with the administration of, assist or contribute support to ASSOCIATION OF PACKERS AND DRIVERS, or any other labor organization of our employees.

WE WILL NOT recognize or contract with ASSOCIATION OF PACKERS AND DRIVERS, as the collective-bargaining representative of our employees, or give effect to the agreement with it dated February 14, 1965, or any renewal, extension or modification thereof, unless and until said Association has been certified as the majority representative of our employees by the National Labor Relations Board.

WE UNDERSTAND that nothing in the Labor Board's order requires us to withdraw, change or abandon any term or condition of employment currently enjoyed by our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of any right guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL make whole Ina Faye Richardson for any loss of earnings she may have suffered by reason of the discrimination against her.

All our employees are free to join or assist Bakery Workers, or any other union, or to refrain from doing so.

GUY'S FOODS, INC.  
(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (Title)

---

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1200 Rialto Building, 906 Grand Avenue, Kansas City, Missouri 64106 (Tel. No. Baltimore 1-2732).

---

DECISION AND ORDER

On January 7, 1966, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that these allegations of the complaint be dismissed. In addition, the Trial Examiner found merit in certain objections to the election filed in Case No. 17-RC-4711 and recommended that the election be set aside. Thereafter, the Charging Party filed exceptions to the Trial Examiner's Decision together with a supporting brief, the Respondent filed cross exceptions and an answering brief, and the Party of Interest also filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as modified below.<sup>1/</sup>

---

<sup>1/</sup> The Trial Examiner found that supervisor Caldwell's statement to employee Seal to the effect that if Seal were half a man, Seal would have told Caldwell that representatives of a rival union also attended and spoke at what Caldwell believed to be a meeting of the incumbent union only, violates Section 8(a)(1) of the Act. In view of the numerous other violations of Section 8(a)(1) of the Act in which the Respondent engaged, we deem it unnecessary to pass upon this finding which, in any event, is merely cumulative and does not affect our Order. In view of the findings made and the Order entered, Member Brown finds it unnecessary to pass upon Respondent's checkoff of dues as part of the 8(a)(2) conduct herein.

(Continued on next page)



## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Guy's Foods, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.<sup>2/</sup>

Dated, Washington, D. C. May 18, 1966.

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS  
BOARD

(SEAL)

<sup>1/</sup> (Continued from preceding page)

In his Conclusions of Law, the Trial Examiner inadvertently failed to find that the Respondent, by interfering with, assisting, and contributing support to the incumbent union, had violated Section 8(a)(2) of the Act. We hereby correct the Trial Examiner's Conclusions of Law accordingly.

<sup>2/</sup> The address and telephone number for Region 17, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: 610 Federal Building, 601 East 12th. Street, Kansas City, Missouri 64106 (Tel. No. Fr 4-5282).

BRIEF FOR PETITIONERS

---

IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,189**

---

AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION and LOCAL UNION No. 245, ABC, AFL-CIO, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*  
GUY'S FOODS, INC., *Intervenor.*

---

On Petition to Review an Order of the National Labor Relations Board

---

*Of Counsel:*

VAN ARKEL AND KAISER  
1730 K St., N.W.  
Washington, D. C. 20006

HENRY KAISER  
RONALD ROSENBERG  
*Attorneys for Petitioners.*  
**United States Court of Appeals**  
for the District of Columbia Circuit

**FILED FEB 27 1967**

---

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.



*Nathan J. Paulson*  
CLERK

### QUESTIONS PRESENTED

1. Whether, on the record herein, the Board erred in not finding additional violations of Section 8(a)(1) and Section 8(a)(2) of the Act.

2. Whether the Board's order is valid and proper, and effectively remedies the Company's unfair labor practices.

## TABLE OF CONTENTS OF BRIEF

	Page
Questions Presented	
Jurisdictional Statement .....	1
Statement of the Case .....	2
A. The Underlying Facts .....	2
B. The Board's Decision .....	4
Statutes Involved .....	6
Statement of Points .....	6
Summary of Argument .....	7
Argument .....	8
I. The Board Erred in Failing to Order Reimbursement of the Illegal Dues Deductions .....	8
II. The Board Erred in Failing to Find That the Company Dominated the Association .....	11
III. The Board's Remedial Order Is Inadequate ....	14
Conclusion .....	15
Appendix .....	17

## INDEX OF CITATIONS

American Newspaper Publishers Association v. NLRB, 193 F.2d 782 (7th Cir.) .....	13
Associated Home Builders v. NLRB, 352 F.2d 745 60 LRRM 2341, 2351 (9th Cir. 1965) .....	13
Dixie Bedding Mfg. Co. v. NLRB, 268 F.2d 901, 907 (5th Cir. 1959) .....	10, 11
Fibreboard Corp. v. Labor Board, 379 U.S. 203, 215	14
Frito Co. v. NLRB, 330 F.2d 458 (9th Cir.) .....	13
H. W. Elson Bottling Co., 155 NLRB No. 63, 60 LRRM 1381 .....	11, 14
J. P. Stevens & Co., 157 N.L.R.B. No. 90, 61 LRRM 1437 .....	14

	Page
Labor Board v. Mine Workers, 355 U.S. 453, 458 (1958) .....	7, 12
Local 357, IBT v. NLRB, 107 U.S. App. D.C. 188, 275 F.2d 646 (1960), affirmed in part and reversed in part, 365 U.S. 667 .....	10
Local Lodge 1424 IAM v. NLRB, 105 App. D. C. 102, 264, F.2d 579, 582 (1959), reversed on other grounds, 362, U. S. 411 (1960) .....	7, 10
NLRB v. Local 60, United Brotherhood of Carpenters, 365 U.S. 651 .....	7, 8, 9, 10, 11
NLRB v. Masters-Lake Success, Inc., 287 F.2d 35 (2nd Cir. 1961) .....	10
NLRB v. Revere Metal Art, 280 F.2d 196 (2nd Cir. 1960) .....	10
NLRB v. Thompson Ramo Woolridge, 305 F.2d 807 (7th Cir. 1962) .....	12, 13
NLRB v. U. S. Steel, 278 F.2d 896 (3rd Cir. 1960) ..	10
Northwest Engineering Company, 148 NLRB 1136, 1145 .....	6
O'Neill International Detective Agency v. NLRB, 280 F.2d 936 (1960) .....	7, 9, 11
Virginia Electric Co. v. Labor Board, 319 NLRB 533	8

## STATUTES:

National Labor Relations Act, as amended (61 Stat. 136): .....	17
29 U.S.C. § 151 <i>et seq.</i> .....	17
Section 8(a)(1)—Section 8(a)(2) .....	17



IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20,189

---

AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION and LOCAL UNION No. 245, ABC, AFL-CIO, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*  
GUY'S FOODS, INC., *Intervenor.*

---

On Petition to Review an Order of the National Labor Relations Board

---

**BRIEF FOR PETITIONERS**

---

**JURISDICTIONAL STATEMENT**

This case is before the Court on a Petition to Review an Order of the National Labor Relations Board (hereinafter called the "Board"). The Court's jurisdiction rests on Section 10(f) of the National Labor Relations Act, as amended, 29 U.S.C. § 160(f). The Decision and Order of the Board are officially reported at 158 NLRB No. 89 (J.A. 204).

### STATEMENT OF THE CASE

The proceedings were initiated by charges by petitioners that Guy's Foods, Inc. (hereinafter called the "Company") had violated various sections of the Labor Management Relations Act (the "Act"). Thereafter, the General Counsel issued a complaint alleging that the Company had violated Sections 8(a)(1)(2) and (3) of the Act. The complaint alleged that the Company had interfered with the Section 7 rights of its employees, had assisted and interfered with the administration of an independent labor organization, the Packers & Drivers Association (the "Association") and had unlawfully discharged an employee for union activity. Subsequently, a hearing was held before Trial Examiner Joseph I. Nachman. On January 10, 1966, Trial Examiner Nachman issued his decision finding that the Company had violated the Act in the manner alleged. Trial Examiner Nachman failed to make certain of the findings and recommendations requested by petitioners. Thereupon, both the petitioners and the Company filed exceptions to the Trial Examiner's decision. On May 18, 1966, the Board affirmed the Trial Examiner.

Petitioners then filed a petition for review in this Court on May 19, 1966. On May 27, 1966, the Company filed a petition for review in the Eighth Circuit. Upon motion by the Board, the Eighth Circuit transferred the Company's appeal to this Court. Thereafter, the Board filed a cross-petition for enforcement of its order. The Company then filed a motion to dismiss the instant petition which was denied by this Court on October 31, 1966.

#### A. The Underlying Facts

In November, 1964, when the then-existing collective bargaining agreement between the Company and the Association was about to expire, the petitioners instituted an organizational campaign among the Company's employees. J.A. 177. Following a meeting of the employees held by petitioners, various Company officials questioned the em-

ployees about their interest in the organizational drive. One admitted supervisor told an employee who had signed an authorization card that no one was going to get a Christmas bonus because of the Union (petitioners). J.A. 178. On December 30, an active supporter of the petitioners, Ina Faye Richardson, was discharged. J.A. 179. At various times throughout this period, various Company officials made threats of one kind or another to those employees suspected of interest in the petitioners' campaign.

Petitioners filed representation petitions seeking a Board election in December, 1964, which were dismissed by the Regional Director on February 5, 1965. J.A. 174. Following that dismissal, the Company and the Association negotiated for a new contract which was executed on February 14, 1966. J.A. 174. That contract provided that approval by the membership of the Association was necessary to consummate the agreement. J.A. 174. The agreement, like earlier agreements, contained a union shop provision. J.A. 174-175.

Petitioners filed new representation petitions on February 26, 1965 which were opposed by the Company and the Association on the grounds, *inter alia*, that their collective bargaining agreement of February 14 constituted a bar. J.A. 175-176. On April 1, 1965, the Regional Director issued a Decision and Direction of Election, rejecting the Company's contract bar contentions on the ground that the contract with the Association had never been ratified. J.A. 176.

The failure of the Association to ratify the agreement could not be blamed on the Company which had taken extraordinary steps to secure ratification. Thus, on March 5, a meeting was held in the office of the Company's President. J.A. 183-186. At that time, the Company President stated that he wanted to get the previously negotiated contract ratified and out of the way. J.A. 183. The then President of the Association, a Mrs. Bernardi, stated that she couldn't do anything about it since she had

received a telegram advising her that such action would be illegal. J.A. 184. At that point, Mr. Caldwell, the President of the Company, said that the telegram was untrue and himself placed a telephone call to the attorney for the Association. J.A. 184. Caldwell spoke to the attorney privately and then advised Bernardi that the attorney, Barker, wished to speak with her. Barker advised Bernardi that a meeting to ratify the contract could be held that afternoon without prior notice.

Caldwell arranged for a meeting of the Association on Company property that afternoon and directed that all plant operations be suspended to enable the employees to attend the meeting. J.A. 185-186. The employees were paid for the time spent attending the meeting. After the meeting convened, a group of twenty or so employees, dissatisfied at what was going on, left the meeting. Caldwell and other supervisors then instructed these employees to go back to the meeting and vote. J.A. 186.

In the election that followed, the Company brought strong pressure upon the employees to vote for the Association. Company supervisors wore Association badges, J.A. 188, and pinned Association badges on employees. J.A. 188. Various threats were made that there would be no overtime if the ABC union (petitioners) came in. J.A. 186. Throughout this entire period of time, the Company continued to check off dues to the Association. J.A. 175.

#### **B. The Board's Decision**

The Trial Examiner found that the Company had illegally assisted the Association. He concluded that the Company violated the Act in attempting to bring about ratification of the contract by permitting an Association meeting on Company property, during working hours, and paying the employees for the time so spent; urging employees to attend such meeting; checking off of dues to the Association from the wages of its employees; distributing badges shortly before the May 5 election, urging

employees to vote for Association; permitting supervisors to wear such badges in the plant; and the conduct of supervisors pinning such badges on employees while they were at work.

The Trial Examiner concluded that in addition, the Company had violated Section 8(a)(3) of the Act by discharging Richardson and had violated Section 8(a)(1) in the following particulars:

(1) Kenneth Caldwell's statement to Seal that if the latter were half a man he would have told Caldwell that the meeting in late November 1964, was not a meeting of Association, as well as the statements immediately thereafter by Supervisors Rolfe and Alexander to employees Peques and Richardson.

(2) Kenneth Caldwell's statement to Seal, that Seal would not be working for Respondent if Bakery Workers did not become the representatives of the employees.

(3) The statements by Guy Caldwell and his wife at the meeting in Caldwell's office on March 5, to the effect that employees who were not happy should quit or get another job, as well as Caldwell's statement to Bernardi concerning the latter's assistance to Bakery Workers.

(4) The statements to employees Pardue and Mealy by Supervisor Soloman.

(5) The statement of Supervisor Rolfe to employee Thompson that she thought Caldwell would sell the plant if Bakery Workers got in, and that in that event, the employees would probably lose their overtime.

(6) The wearing of Association badges in the plant by Supervisors Kenneth Caldwell, Jr., and Helen Fraley, and the pinning of Association badges on employees Thompson and Tibbitts, by Supervisors Rolfe and Kenneth Caldwell, Jr.



(7) By placing into effect on July 9 and July 16, the wage increases provided for in the agreement of February 14, retroactive to February 15, as set forth in section IIBS above. Although these increases were made effective after the election, and allegedly because of Respondent's contract obligation, the fact remains they were granted at a time when the objections to the election had been filed. In this posture the possibility of a new election was real, and a wage increase at such a time was no more than a reward to the employees for having rejected Bakery Workers at the May 5 election, and an inducement to do so again should a new election be held. See *Northwest Engineering Company*, 148 NLRB 1136, 1145.

Though finding that the Company had violated the Act by checking off dues to the Association after March 2, he did not recommend that the Board order the dues illegally checked off reimbursed to the employees. He further concluded that the Company's conduct did not constitute domination requiring disestablishment of the Association. J.A. 194, n. 37.

Exceptions were filed by both the Company and the petitioner but the Board affirmed the Trial Examiner's decision without significant modification.

#### STATUTES INVOLVED

The pertinent sections of the National Labor Relations Act are set out in the Appendix, p. 17, *infra*.

#### STATEMENT OF POINTS

1. The Board erred in failing to order reimbursement of illegal dues deductions made by the Company.

2. The Board erred in failing to find that the Company dominated the Association and not ordering the disestablishment of the Association.

3. The Board erred in failing to order effective remedial relief.

### SUMMARY OF ARGUMENT

The Board erroneously permitted the Company to escape any sanction for its unlawful check-off of dues to the Association. Though finding that the check-off of dues to the Association after March 2 was unlawful, the Board did not order that the employees involved be reimbursed for the monies illegally taken from them. The Board affirmed the Trial Examiner's conclusion that "a sufficient predicate (had) not been established" for the reimbursement of dues. In support of this proposition, the Trial Examiner cited *NLRB v. Local 60, United Brotherhood of Carpenters*, 365 U.S. 651. That case is not controlling here since in that case there was no finding "... that the union was not the result of the employees' 'free choice'." 365 U.S. at 654. This very distinction of *Local 60* had been anticipated by the Third Circuit in *O'Neill International Detective Agency v. NLRB*, 280 F. 2d 936 (1960) and by this Court in *Local Lodge 1424 IAM v. NLRB*, 105 App. D.C. 102, 264 F.2d 579, 582 (1959), *reversed on other grounds*, 362, U.S. 411 (1960). Here the Company's massive efforts in behalf of the Association made abundantly clear to the employees that any disloyalty to the Association would subject them to possible discharge. Under these circumstances, the Board's refusal to order the reimbursement of the dues illegally appropriated from the employees must be reversed.

The evidence required a finding that the Company had illegally dominated the Association but the Board failed to make this critical finding. The Board's failure to make that finding meant that there was no order that the Association be disestablished. *Labor Board v. Mine Workers*, 355 U.S. 453, 458 (1958). There was abundant evidence that the Company had aided the Association in every conceivable manner, permitting use of its property for Association meetings, suspending all production to permit an Association meeting and forcing employees to attend that meeting. Moreover, the very meeting itself was the prod-

uct of the Company's activities. Although the President of the Association did not want to call a ratification meeting, Mr. Caldwell, the Company President, forced her to hold that meeting. He personally called the attorney of the Association in his desire "to get the contract over with." These facts required a finding that the Association was Company dominated.

The Board's remedial order was inadequate to cure the proven unfair labor practices. Rather, the Board contented itself with a boilerplate order, failing to consider the unique circumstances of this case. Its failure to order the remedial relief requested by the petitioners constituted an abuse of discretion.

### ARGUMENT

#### I. The Board Erred in Failing to Order Reimbursement of the Illegal Dues Deductions

The Board affirmed the Trial Examiner's finding that the Respondent violated Section 8(a)(2) of the Act by checking off dues after March 2 (J.A. 194, n. 37). Despite this finding the Board failed to order the reimbursement of these monies illegally appropriated from the employees' wages.

The only reason advanced by the Trial Examiner and the Board for refusing this relief was that "... a sufficient predicate has not been established. See *NLRB v. Local 60, United Brotherhood of Carpenters, etc.*, 365 U.S. 651." J.A. 198, n. 39.

The Board's reliance on *Local 60, supra*, is misplaced. There the Supreme Court, in holding a dues reimbursement remedy inappropriate distinguished its earlier holding in *Virginia Electric Co. v. Labor Board*, 319 NLRB 533. *Virginia Electric* was deemed inapplicable since in that case there had been findings "... that the union was not the result of the employees' free choice (319 U.S. at 537),

and that the employees had to remain members of the union to retain their jobs. *Id.*, 540." 365 U.S. at 654.

Here the Board found that the Association's status was not the result of the employees' free choice. Furthermore, the evidence revealed that the prior contracts and the newly negotiated contract contained a union shop provision requiring employees to be members of the Association in order to retain their jobs.<sup>1</sup> The very continuation of the Association as the collective bargaining agent was the result of the Employer's illegal assistance. The Board found that the check off of dues for which reimbursement is now sought was itself an independent violation of Section 8(a)(2). *Local 60* does not prohibit the dues reimbursement remedy under these circumstances.

The basis for distinction between *Local 60* and the instant case was anticipated by the Third Circuit in *O'Neill International Detective Agency v. NLRB*, 280 F.2d 936, 46 LRRM 2503 (1960). On facts similar to the facts in the instant case, the Third Circuit held a dues reimbursement remedy appropriate. Prior to its decision in *O'Neill*, the Third Circuit had denied the dues reimbursement remedy in a series of cases involving the so-called Brown-Olds remedy, the very issue subsequently decided by the Supreme Court in *Local 60 v. NLRB*, *supra*. Yet in *O'Neill*, the Court held,

"The immediate distinction between those four cases and this, is that in none of the foregoing was the union company-assisted, whereas in this case, as in *Virginia Electric and Spiewak*, *supra*, the Board found that the petitioner's employees were required, as a condition of continued employment, to join a union the organization of which had been illegally assisted by the petitioner in violation of Section 8(a)(1)."

---

<sup>1</sup> The Trial Examiner noted that the collective bargaining agreement provided that employees were required to become members or to pay an agency fee to the independent union on pain of discharge. J.A. 175. Such a union shop provision is legal in Missouri, one of the two states in which the Company had plants.

See also *Dixie Bedding Mfg Co. v. NLRB*, 268 F.2d 901, 907 (5th Cir. 1959); *NLRB v. U. S. Steel*, 278 F.2d 896 (3rd Cir. 1960).

This Court also, prior to the *Local 60* decision, held the dues reimbursement remedy appropriate where there was a finding of illegal Company assistance, *Local Lodge 1424, IAM v. NLRB*, 105 App. D.C. 102, 264 F.2d 579, 582 (1959), *reversed on other grounds*, 362 U.S. 411 (1960), while denying that remedy in the *Local 60* situation. *Local 357, IBT v. NLRB*, 107 U.S. App. D.C. 188, 275 F.2d 646 (1960) affirmed in part and reversed in part, 365 U.S. 667.<sup>2</sup>

What is present here is a massive effort on the part of the Company to keep petitioner out of the plant by forcing the continuation of the Association as bargaining agent upon the employees. Thus, the Company's supervisors pinned badges on employees urging them to vote for the Association. J.A. 188. The Company distributed badges supporting the Association among the employees. J.A. 187-188. Various Company officials, including Guy Caldwell, exerted strong pressure on the employees to accept the proposed contract with the Association, directing employees who left the meeting that they must return. J.A. 185-186.

Throughout this entire period of time, the Company continued making illegal deductions of dues for the Association (J.A. 2728). Clearly, all employees who might have protested these deductions were aware that such a protest would have been considered an act of disloyalty by the Company, and that, like Richardson, they might be fired. This was coercion in the literal sense.

---

<sup>2</sup> A similar distinction was drawn by the Second Circuit in *NLRB v. Revere Metal Art*, 280 F. 2d 196 (2nd Cir. 1960). Other decisions of the Second Circuit denied reimbursement under various formulations of the standard to be applied. See, e.g., *NLRB v. Masters-Lake Success, Inc.*, 287 F. 2d 35 (2nd Cir. 1961).



Thus, as in *O'Neill* and *Dixie Bedding*, the employees in fact faced the risk of discharge if they attempted to prevent the check off of part of their wages to the Association. The Board found that at least one employee was discharged because of interest in the petitioners and numerous other employees were threatened for their opposition to the continuation of the Association as bargaining agent. The existence of the collective bargaining agreement between the Company and the Association, with a strong union shop provision, similarly had coercive effect. The check off of dues by the Company to the independent was thus clearly coercive and a dues reimbursement remedy was therefore necessary and appropriate to correct the unfair labor practice.

The Board's decision is anomalous. Despite its finding that the check off of dues was illegal, that illegal act is in no way corrected. The Company and the Association are permitted to benefit from their own derelictions. The employees who were victimized by these unlawful acts recover nothing.

The Board's obligation is to "take measures designed to recreate the conditions and relationships that would have been had there been no unfair labor practice." *H. W. Elson Bottling Co.*, 155 NLRB No. 63, 60 LRRM 1 381, quoting concurring opinion of Justice Harlan in *NLRB v. Local 60, supra*. Surely, that aim is not achieved where the Company is permitted to continue illegal deductions from the employees while engaging in a series of threats and illegal coercion to retain the Association and the only affirmative relief afforded is that there be a new election.

## **II. The Board Erred in Failing to Find That the Company Dominated the Association**

The Trial Examiner concluded that the evidence did not support petitioner's contention that the Company's conduct constituted domination requiring disestablishment of the Association and the Board affirmed that finding. J.A.

194, n. 37. The failure to find domination resulted in a refusal by the Board to order the disestablishment of the Association. *Labor Board v. Mine Workers*, 355 U.S. 453, 458 (1958).

The Board did not order disestablishment despite the plethora of evidence detailed in the Trial Examiner's decision demonstrating the extraordinary actions of the Company on the Association's behalf. Of importance are the use of Company property for the Association's meetings, the suspension of work to allow employees to attend this meeting and the threats of Company to employees forcing them to return to the meeting. Cf. *NLRB v. Thompson Ramo Woolridge*, 305 F.2d 807 (7th Cir. 1962).

The clearest demonstration of the Company's domination of the Association was the manner in which Guy Caldwell, the Company's President, forced the Association's officers to hold a ratification meeting on March 5, 1965. J.A. 32-35. Although Bernardi, the President of the Association was unwilling to hold a meeting, Caldwell successfully overrode her reluctance. When Bernardi indicated concern that a meeting might be illegal, Caldwell personally called the attorney for the Association. J.A. 34. After Caldwell had spoken to the Association attorney privately, he called Bernardi to the telephone. The attorney then advised Bernardi that the Association could hold a meeting *without prior notice*. Subsequently, the Association's officers declared the meeting unlawful. As Bernardi testified, "Mr. Guy told me he wanted to get the contract over with." J.A. 33. Since Mr. Guy wanted to get the contract over with, he forced the Association to call a meeting and when he encountered objection, arranged to have the Association's attorney advise the leaders of the Association that a meeting was permissible. J.A. 34-35. His efforts to have the employees ratify the contract have been detailed above. Since Mr. Guy wanted to get the contract over with, he arranged a meeting on Company property and

Company time. He and other Company officials then ordered dissatisfied employees to return to the meeting. J.A. 185-186.

If the Association were in fact independent, its leaders, not Mr. Guy, would have decided whether to hold that meeting. If the Association were in fact independent, its leaders, not Mr. Guy, would have obtained necessary legal advice from their attorney. If the Association were in fact independent, its leaders, not Mr. Guy, would have arranged the time and place of the meeting. Finally, if the Association were in fact independent, it, not Mr. Guy, would have assured the continued presence of its members at that meeting.

Admittedly no single fact, taken in isolation, is controlling on the question of domination. *NLRB v. Thompson Ramo Woolridge, supra*. Rather, it is the totality of the evidence. Here the totality of the evidence demonstrated that the Company in fact dominated the Association. The clearest possible proof of the fact was the manner in which Guy Caldwell manipulated the Association when it suited his purposes to do so. The Board's failure to find that the Company dominated the Association was erroneous. The Company has argued that no allegation of domination appears in the complaint and that the Board was therefore precluded from making this finding. Neither the Trial Examiner nor the Board refused to consider the question of domination for that reason but rather refused to make that finding on the merits. Moreover, the Courts of Appeal have repeatedly held that the Board may not refuse to make a finding merely because the matter is not mentioned in the complaint where the alleged conduct was in fact violative of the Act. *Associated Home Builders v. NLRB*, 352 F.2d 745, 60 LRRM 2341, 2351 (9th Cir. 1965); *American Newspaper Publishers Association v. NLRB*, 193 F.2d 782 (7th Cir.), *cert. denied* on this point, 344 U.S. 816; *Frito Co. v. NLRB*, 330 F.2d 458 (9th Cir.). The evidence

revealed Company domination and the Trial Examiner expressly ruled on the question. J.A. 198, n. 37. Despite petitioners' exception to his adverse finding, the Board affirmed the Trial Examiner, thereby denying petitioners a critical finding. Since the matter was fairly presented, the fact that the General Counsel had not so alleged would not be controlling.

### III. The Board's Remedial Order Is Inadequate

The Board erred in failing to require the company to give adequate notices to each individual employee of its intention to cease and desist from its unfair labor practices and to grant to Petitioners reasonable access to the employees. This was the precise remedy ordered by the Board in *H. W. Elson Bottling Co.*, 155 NLRB No. 63, 60 LRRM 1381. Here, despite the repeated requests of Petitioners for the *Elson* remedy, the Board denied the relief sought without any statement whatsoever of the reasons for the denial. The company's violations of the Act in this case were of so egregious a nature that the *Elson* remedies were required in order to prevent the Company from the benefitting from its unfair labor practices.

The Board has recently manifested increased awareness that some additional relief, and not only the boilerplate remedies which were provided in this case, are required under special circumstances in order to provide effective, deterrent and realistic remedies. See, e.g., *H. W. Elson Bottling, supra*, *J. P. Stevens & Co.*, 157 NLRB No. 90, 61 LRRM 1437; *Fibreboard Corp. v. Labor Board*, 379 U.S. 203, 215. But the Board did not recognize that similar special remedies were required under the unique facts of this record. The Board's failure adequately to consider and base remedial action upon this fact was an abuse of discretion. Its failure to incorporate in its order the relief requested by the Union was plain error since that relief, on this record, was necessary to effectuate the policies of the Act. This Court should see to it that the Board com-

plies with the Act, enforcing it adequately as the particular facts command.

**CONCLUSION**

For the reasons stated herein, the Court should grant the relief requested.

Respectfully submitted,

HENRY KAISER  
RONALD ROSENBERG  
*Attorneys for Petitioners.*

*Of Counsel:*

VAN ARKEL AND KAISER  
1730 K St., N.W.  
Washington, D. C. 20006

December, 1966





## APPENDIX

## Statutes Involved

National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, 61 Stat. 136:

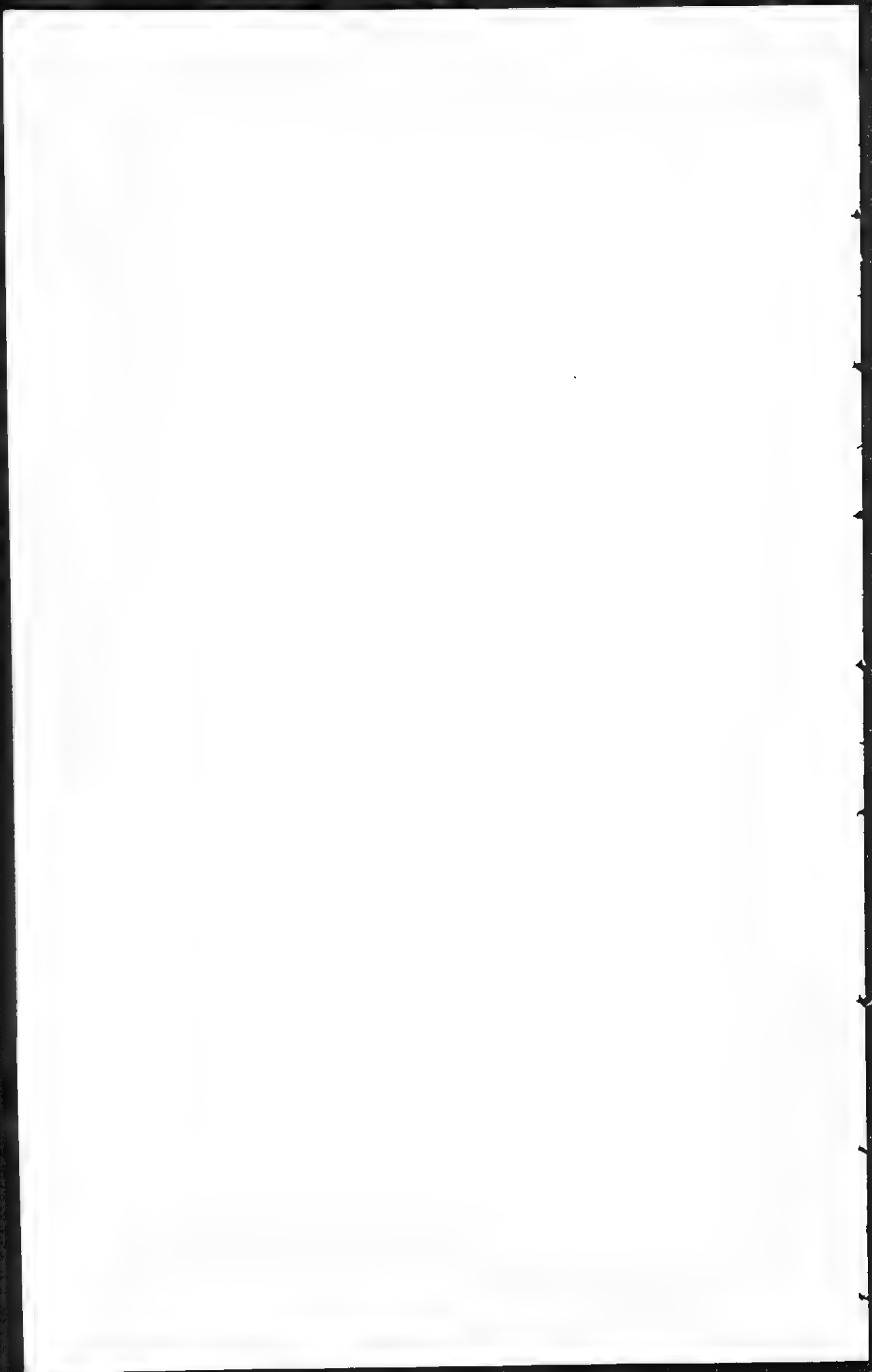
Section 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-member-

ship in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;



**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

---

**United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

No. 20,189

AMERICAN BAKERY & CONFECTIONERY WORKERS IN-  
TERNATIONAL UNION AND LOCAL UNION NO. 245,  
ABC, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

GUY'S FOODS, INC., INTERVENOR

---

No. 20,347

GUY'S FOODS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

---

On Petitions to Review and on Cross-Petition to Enforce  
an Order of the National Labor Relations Board

---

United States Court of Appeals  
for the District of Columbia Circuit

ARNOLD ORDMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*

GARY GREEN,  
VIVIAN ASPLUND,  
*Attorneys,*

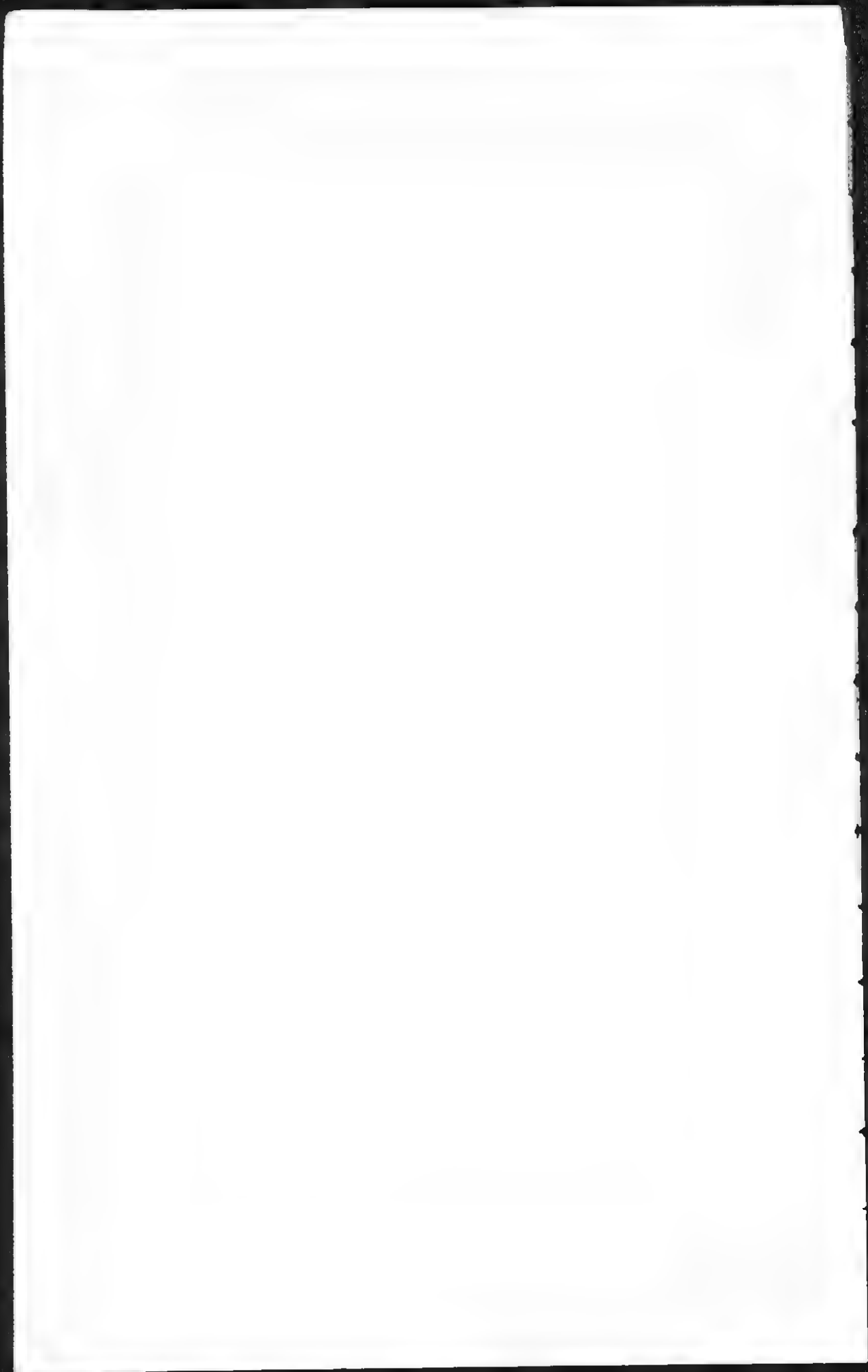
*National Labor Relations Board.*

---

FILED JAN 20 1957

*Ne. J. Paulson*  
CLERK





## STATEMENT OF QUESTIONS PRESENTED

The prehearing conference stipulation, which appears at pp. 1-2 of the Joint Appendix, summarizes the issues as follows:

1. All parties agree that:

A. In No. 20,347, the issues presented are as follows:

(1) Whether the Board properly found that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees concerning their union activities, by electioneering on behalf of an unaffiliated labor organization herein called the Association, and by threatening employees with job reprisals and granting them benefits to discourage interest in the Bakery Workers.

(2) Whether the Board properly found that the Company assisted, contributed support to, and interfered with the administration of the Association, in violation of Section 8(a)(2) and (1) of the Act.

(3) Whether the Board properly found that the Company discharged employee Ina Faye Richardson for her union activities, in violation of Section 8(a)(3) and (1) of the Act.

(4) Whether the Board erred in refusing to permit respondent to relitigate in this proceeding matters litigated before the Board in Case No. 17-RC-4711.

(5) Whether the Board's order is appropriate under the circumstances.

B. In No. 20,189, the issues presented are as follows:

(1) Whether, on the record herein, the Board erred in not finding additional violations of Section 8(a)(1) and Section 8(a)(2) of the Act.

(2) Whether the Board's order is valid and proper, and effectively remedies the Company's unfair labor practices.

2. The Company, but not the Board or the Union, believes that the following further issues are presented in No. 20,347:

A. Whether the Board erred in refusing to grant respondent and the Association a sixty (60) day "insulated" period after a timely representation petition for an inappropriate unit was dismissed.

B. Whether the Board erred in directing an election in Case No. 17-RC-4711 and in its holding that such election was not barred by a contract between the Association and respondent.

### III

## INDEX

	Page
Statement of questions presented .....	1
Counterstatement of the case .....	2
I. The Board's findings of fact .....	3
A. Background .....	3
B. The interference, restraint and coercion .....	5
C. The assistance and support to the Association and the interference with its administration .....	9
D. The discharge of Richardson .....	10
II. The Board's conclusions and order .....	12
Summary of argument .....	13
Argument .....	16
I. Substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a) (7) and (2) of the Act ..	16
II. Substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a) (3) and (1) of the Act ....	24
III. The Board's order is valid and proper .....	28
Conclusion .....	37
Appendix .....	38

## AUTHORITIES CITED

### Cases:

- \**Amalgamated Clothing Workers v. N.L.R.B. (Hamburg Shirt Corp.)*, — App. D.C. —, —  
F. 2d —, 63 LRRM 2581 ..... 36-37
- A.F.L. v. N.L.R.B.*, 308 U.S. 401 ..... 21
- \**Appalachian Shale Products Co.*, 121 NLRB 1160 .. 22, 23

\*Authorities chiefly relied upon.

# IV

Cases—Continued	Page
<i>Boire v. Greyhound Corp.</i> , 376 U.S. 473 .....	21
<i>Cleaver-Brooks Mfg. Corp. v. N.L.R.B.</i> , 264 F. 2d 637 (C.A. 7), cert. den., 361 U.S. 817 .....	20
<i>Deluxe Metal</i> , 121 NLRB 995 .....	23, 24
<i>District 50, U.M.W. v. N.L.R.B.</i> , 234 F. 2d 565 (C.A. 4) .....	19
<i>H. W. Elson Bottling Co.</i> , 155 NLRB No. 63, 60 LRRM 1381 .....	36
<i>Fibreboard Paper Products Corp. v. N.L.R.B.</i> , 379 U.S. 203 .....	28
* <i>Gulf Bottlers, Inc.</i> , 127 NLRB 850, enf'd <i>sub nom.</i> <i>Int'l Union of United Brewery, etc. v. N.L.R.B.</i> , 111 App. D.C. 383, 298 F. 2d 297 .....	18
<i>Hendrix Mfg. Co. v. N.L.R.B.</i> , 321 F. 2d 100 (C.A. 5) .....	21
* <i>I.A.M., Lodge 35 v. N.L.R.B.</i> , 311 U.S. 72 .....	16, 18
* <i>Int'l Union of United Brewery Workers, etc. v.</i> <i>N.L.R.B.</i> , 111 App. D.C. 383, 298 F. 2d 297, cert. den., 369 U.S. 843 .....	27
<i>Leedom v. I.B.E.W., Local 108</i> , 107 App. D.C. 357, 278 F. 2d 237 .....	22
* <i>Local 60, Carpenters v. N.L.R.B.</i> , 365 U.S. 651 ....	32, 33
<i>Local 483, Boilermakers v. N.L.R.B.</i> , 109 App. D.C. 382, 288 F. 2d 166, cert. den., 368 U.S. 832 .....	19-20
<i>Local 1424, I.A.M. v. N.L.R.B.</i> , 362 U.S. 411 .....	31
<i>Mastro Plastics Corp. v. N.L.R.B.</i> , 350 U.S. 270 ....	18
<i>Meyers Bros. of Missouri, Inc.</i> , 151 NLRB 889 ....	34
* <i>Midwest Piping &amp; Supply Co., Inc.</i> , 63 NLRB 1060 .....	15, 18, 19, 20, 21
<i>Morrison-Knudsen Co. v. N.L.R.B.</i> , 276 F. 2d 63 (C.A. 9) .....	32
<i>N.L.R.B. v. Air Master Corp.</i> , 339 F. 2d 553 (C.A. 3) .....	20
<i>N.L.R.B. v. Braswell Motor Freight Lines</i> , 209 F. 2d 622 (C.A. 5) .....	18
<i>N.L.R.B. v. Burke Oldsmobile, Inc.</i> , 288 F. 2d 14 (C.A. 2) .....	21, 34

\*Authorities chiefly relied upon.



## Cases—Continued

	Page
<i>N.L.R.B. v. Burry Biscuit Corp.</i> , 123 F. 2d 540 (C.A. 7) .....	14
<i>N.L.R.B. v. Chardon Tel. Co.</i> , 323 F. 2d 563 (C.A. 6) .....	30
<i>N.L.R.B. v. Crowley's Milk Co., Inc.</i> , 208 F. 2d 444 (C.A. 3) .....	19
<i>N.L.R.B. v. Dan River Mills, Inc.</i> , 274 F. 2d 381 (C.A. 5) .....	24
<i>N.L.R.B. v. District 50, U.A.W.</i> , 355 U.S. 453 .....	29, 31
<i>N.L.R.B. v. Express Publishing Co.</i> , 312 U.S. 426..	28, 29
<i>N.L.R.B. v. Halben Chemical Co.</i> , 279 F. 2d 189 (C.A. 2) .....	33-34
<i>N.L.R.B. v. Ephraim Haspel</i> , 228 F. 2d 155 (C.A. 2) .....	14
<i>N.L.R.B. v. Local 294, Teamsters</i> , 279 F. 2d 83 (C.A. 2) .....	33
<i>N.L.R.B. v. Marcus Trucking Co.</i> , 286 F. 2d 583 (C.A. 2) .....	22, 34
* <i>N.L.R.B. v. National Container Corp.</i> , 211 F. 2d 525 (C.A. 2) .....	19, 20
<i>N.L.R.B. v. Park Edge Sheridan Meats, Inc.</i> , 323 F. 2d 956 (C.A. 2) .....	18
<i>N.L.R.B. v. Prince Macaroni Mfg. Co.</i> , 329 F. 2d 803 (C.A. 1) .....	30
<i>N.L.R.B. v. Revere Metal Art Co.</i> , 280 F. 2d 96 (C.A. 2), cert. den., 364 U.S. 894 .....	34
<i>N.L.R.B. v. L. Ronney &amp; Sons Furniture Mfg. Co.</i> , 206 F. 2d 730 (C.A. 9), cert. den., 346 U.S. 937..	30
<i>N.L.R.B. v. Sellers</i> , 346 F. 2d 625 (C.A. 9) .....	18
<i>N.L.R.B. v. Shedd-Brown Mfg. Co.</i> , 213 F. 2d 163 (C.A. 7) .....	34
<i>N.L.R.B. v. Seven-Up Bottling Co.</i> , 344 U.S. 344 ....	28
* <i>N.L.R.B. v. Signal Oil &amp; Gas Co.</i> , 303 F. 2d 785 (C.A. 5) .....	19
<i>N.L.R.B. v. Thompson-Ramo-Woolridge, Inc.</i> , 305 F. 2d 807 (C.A. 7) .....	30
<i>N.L.R.B. v. U. S. Steel Corp.</i> , 278 F. 2d 896 (C.A. 3), cert. den., 366 U.S. 908 .....	34-35

---

\*Authorities chiefly relied upon.

# VI

Cases—Continued	Page
<i>N.L.R.B. v. Wemyss</i> , 212 F. 2d 465 (C.A. 9) .....	30
<i>Ohio-Ferro-Alloys Corp. v. N.L.R.B.</i> , 213 F. 2d 646 (C.A. 6) .....	19
<i>O'Neill Int'l Detective Agency v. N.L.R.B.</i> , 280 F. 2d 936 (C.A. 3) .....	34
<i>Perry Coal Co. v. N.L.R.B.</i> , 284 F. 2d 910 (C.A. 7), cert. den., 366 U.S. 949 .....	34
<i>Phelps-Dodge Corp. v. N.L.R.B.</i> , 313 U.S. 177 .....	28
<i>Revere Copper &amp; Brass, Inc. v. N.L.R.B.</i> , 324 F. 2d 132 (C.A. 7) .....	18
* <i>St. Louis Indep. Packing Co. v. N.L.R.B.</i> , 291 F. 2d 700 (C.A. 7) .....	19
* <i>Virginia Elec. &amp; Power Co. v. N.L.R.B.</i> , 319 U.S. 533 .....	28, 31, 32, 33

## Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*)

Section 7 .....	13
Section 8(a) (1) .....	3, 16, 24, 36
Section 8(a) (2) .....	3, 16, 36
Section 8(a) (3) .....	3, 24
Section 10(e) .....	1
Section 10(f) .....	1

---

\*Authorities chiefly relied upon.

**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

No. 20,189

**AMERICAN BAKERY & CONFECTIONERY WORKERS IN-  
TERNATIONAL UNION AND LOCAL UNION NO. 245,  
ABC, AFL-CIO, PETITIONERS**

*v.*

**NATIONAL LABOR RELATIONS BOARD, RESPONDENT**

*and*

**GUY'S FOODS, INC., INTERVENOR**

---

No. 20,347

**GUY'S FOODS, INC., PETITIONER**

*v.*

**NATIONAL LABOR RELATIONS BOARD, RESPONDENT**

---

**On Petitions to Review and on Cross-Petition to Enforce  
an Order of the National Labor Relations Board**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

---

## COUNTERSTATEMENT OF THE CASE

This proceeding is before the Court upon two petitions to review a single decision and order (J.A. 171-205)<sup>1</sup> of the National Labor Relations Board issued May 18, 1966, against Guy's Foods, Inc. ("the Company"), and reported at 158 NLRB No. 89. American Bakery and Confectionery Workers International Union, AFL-CIO, and American Bakery and Confectionery Workers International Union, AFL-CIO, Local No. 245 ("Bakery Workers"), the charging parties before the Board, have petitioned to review that portion of the Board's decision and order which rejected certain of their contentions and requests for remedial relief (No. 20,189). The Company thereafter petitioned to review the Board's order in the United States Court of Appeals for the Eighth Circuit, which petition has been transferred to this Court (No. 20,347). In answering the Company's petition, the Board has cross-petitioned for enforcement of its order. The petitions have been consolidated by order of this Court, and the Company has been permitted to intervene in No. 20,189. This Court has jurisdiction under Section 10(e) and (f) of the Act.<sup>2</sup>

---

<sup>1</sup> "J.A." references are to pages of the record printed as a joint appendix to the briefs. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

<sup>2</sup> The relevant statutory provisions are reprinted in an appendix to the brief, *infra*, pp. 38-41.

### **I. The Board's Findings of Fact**

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees concerning their union activities, by electioneering on behalf of the Association of Packers and Drivers Union, and by threatening employees with job reprisals and granting them benefits to discourage interest in the Bakery Workers. The Board also found that the Company violated Section 8(a)(2) and (1) of the Act by assisting, contributing support to, and interfering with the administration of the Association, and that it violated Section 8(a)(3) and (1) of the Act by discharging an employee for union activities. The fact upon which the Board's findings are based are summarized below.

#### **A. Background**

The Company, a producer and wholesale distributor of potato chips, packaged nuts, and other related products, has its principal office and plant in Kansas City, Missouri, with additional plants and distribution centers in various midwestern cities (J.A. 173). In December 1956, the Board certified the Association as the representative of all the Company's employees (J.A. 173; 74).<sup>3</sup> In the years following the certification, the Company and the Association entered into successive contracts, including one executed

---

<sup>3</sup> Excluded from the unit were office clerical employees, route supervisors, and all the statutory exclusions (J.A. 173 n. 5).



on March 7, 1963, which was effective from February 15, 1963, through February 14, 1965 (J.A. 173; 74, 152-156). The contract provided for automatic renewal from year to year unless prescribed notice was given of an intent to terminate (J.A. 173; 155-156). On November 27, 1964, the Association gave appropriate notice terminating the contract and requested negotiations for a new agreement (J.A. 173; 158).

On December 10 and December 14, 1964, certain affiliates of the Bakery Workers filed petitions seeking to represent separate units of the Company's employees at the Kansas City, Wichita, and Omaha, plants (J.A. 174; 8, 76, 161-164). The Board found that the only appropriate unit was one encompassing substantially all of the Company's employees and dismissed each of the petitions (J.A. 174; 8, 161-164).

After these petitions were dismissed, the Company and the Association entered into contract negotiations which resulted, on February 14, 1965, in the execution of a new agreement effective from February 15, 1965, through May 1, 1968 (J.A. 174; 77, 159-160). Like the previous contracts, the agreement contained union security and dues checkoff clauses (J.A. 175; 28, 152-155, 159). The 1965 contract also required that the "agreement . . . be submitted to the membership of the [Association] for approval" (J.A. 174; 160).

On February 26, 1965, before the contract was ratified, the international union of the Bakery Workers and the Teamsters Joint Council No. 56 jointly

filed a petition seeking to represent an employer-wide unit (J.A. 175; 8, 79, 132-134). The Company received a copy of this petition on March 2 (J.A. 175; 79, 85). As the contract had not been ratified at the time this petition was filed, it did not bar the processing of the petition and, on May 5, the Board conducted an election which the Association won (J.A. 172, n. 2, 176-177; 146). Thereafter, the Bakery Workers sought to have the election set aside by filing objections to certain Company conduct allegedly affecting the results of the election (J.A. 172, n. 2; 145-146).<sup>4</sup>

*B. The interference, restraint, and coercion*

In November 1964, the Bakery Workers began its campaign to organize the Company's employees (J.A. 177; 91). In late November, Bakery Workers' representatives addressed employees assembled for a union meeting at the Company's Wichita plant (J.A. 177; 91-92). The day following this meeting, Doyle Alexander, an admitted supervisor, asked employee John Peques what the union meeting had been about (J.A. 178; 114-115). Peques refused to supply any information (J.A. 178; 115). Several weeks later, Alexander asked Peques if he had signed a card for the Bakery Workers (J.A. 178; 114). When Peques admitted that he had, Alexander warned that "because of the union and the cards no one was going to get a Christmas bonus" (J.A. 178; 114, 115).

---

<sup>4</sup> The hearing on these objections was consolidated with the hearing in these unfair labor practice cases (J.A. 171; 147).

On January 14, 1965, Kenneth Caldwell, Sr., the manager of the Wichita plant, asked employee Paul Seal "how [he] got mixed up in this [Bakery Workers'] business" (J.A. 181-182; 97, 100). Caldwell warned Seal: "You know, if this Union don't go through, you are not going to work for me any more." (J.A. 182; 100).

During a meeting at the Kansas City plant on March 5, President Caldwell's wife told the employees assembled that, considering their education and qualifications, they were "making plenty of money"; that they should "get this over with and think about getting money and profit sharing"; and that the "people that aren't happy that don't do anything but cause trouble, why don't [they] quit" (J.A. 184; 33, 34). Then, directing her remarks to employee Lucille Bernardi, who had previously sought to post a telegram from the Bakery Workers on the plant bulletin board, Mrs. Caldwell said: "There are plenty of jobs. Get your husband to get you a job." (J.A. 184; 33). When Bernardi replied that she was happy, President Caldwell interjected: "Don't sit there and lie to me. If you are so damned innocent, why were you at that hearing." <sup>5</sup> (J.A. 184; 33). Bernardi explained that she had attended the hearing because she had been told she would be subpoenaed (J.A. 184; 33). To employee Bob Murphy, Mrs. Caldwell said: "If you are dissatisfied you should get yourself another job

---

<sup>5</sup> This reference was to a hearing in a representation case which was later dismissed (J.A. 184, n. 23; 33-34).

someplace else. You might as well start looking someplace else." (J.A. 184-185; 49).

On May 3 or 4, at the Kansas City plant, Elizabeth Soloman, an admitted supervisor, asked employee Ruby Pardoe, who was wearing a Bakery Workers badge, whether she was going to vote for the Bakery Workers and added: "If you had a lick of sense you would take the ABC sticker off and put [an Association of] Packers and Drivers sticker on." (J.A. 187; 60-61). Soloman also asked Pardoe "how the rest of the people were voting" (J.A. 187; 61). Pardoe replied that she knew how some employees would vote but would not give this information to Soloman (J.A. 187; 61). About the same time, Soloman asked employee Helen Mealy why she was wearing a Bakery Workers button instead of an Association one and questioned: "Why do you hate the Company?" (J.A. 187; 51-52). When Mealy replied that she had nothing against the Company, that it was simply a matter of money, Soloman rejoined: "Oh, no, it's better to be loyal; loyalty is better than money." (J.A. 187; 51-52).

At the Wichita plant a week or two before the election on May 5, Supervisor Leotis Rolfe told employee Charles Thompson that, if the Bakery Workers "came ir", the employees would probably lose their overtime and that she thought President Caldwell would sell or close down the plant (J.A. 187; 116). Just prior to the election, Rolfe asked Thompson if he was trying to put the Company out of business and, then, took an Association badge which she was wearing and pinned it on Thompson (J.A. 187-188; 117-118).

On May 4, the day before the election, President Caldwell allowed Helen Fraley, a supervisor, to wear a sign reading "Vote for Packers and Drivers Union" around the Wichita plant for about 2 hours (J.A. 188; 18, 118). Employee Dorothy Draper asked Fraley why she was wearing the sign when she was not a member of the Association to which Fraley replied that President Caldwell had told her she could wear it (J.A. 188; 101-102). Kenneth Caldwell, Jr., another supervisor, also wore one of these signs in the plant on May 4 and told employee Robert Tibbits to get some of the signs and distribute them and pinned two of the signs on Tibbits' back (J.A. 188; 102, 103-104).

After the election had been held and the Bakery Workers' objections thereto had been filed, counsel for the Association, by letter dated June 14, notified the Company that the agreement reached on February 14 had "now been wholly ratified by the Packers & Drivers Union" and requested that "the wage increases negotiated be paid" (J.A. 189-190; 83, 168). The Company's counsel responded, by letter dated July 6, stating that the increased rates of pay would be made "effective at once" and that retroactive wages would be paid as soon as the payroll office could do so (J.A. 190; 83, 169). The wage increase payments provided for in the agreement of February 14, retroactive to February 15, were made on July 9 for employees paid out of Kansas City and a week later, on July 16, for those employees paid out of Wichita (J.A. 190; 19, 36-38).



*C. The assistance and support to the Association and the interference with its administration*

As noted above, on February 26, 1965, before the Association's membership ratified the contract negotiated with the Company, the international union of the Bakery Workers and the Teamsters Joint Council No. 56 jointly filed a petition seeking to represent an appropriate employer-wide unit of the Company's employees (J.A. 175; 8, 79, 132-134). On March 4, the Bakery Workers sent a telegram to the president of the Association which read: "Any action taken on contract negotiations after Friday, February 26, 1965, is illegal and will result in unfair labor charges." (J.A. 182; 29, 30, 42, 149). The next day President Caldwell refused permission to place this telegram on the bulletin board where union notices were occasionally posted, giving as his reason that "it wasn't true" (J.A. 182; 31-32).

Later that day, March 5, President Caldwell suspended operations at the Kansas City plant so that the employees might attend a meeting of the Association to consider ratification of the 1965 contract (J.A. 185; 26, 50, 86). This union meeting, which was held on Company property, was the first ever held during working hours and employees were paid for the time spent at it (J.A. 185; 25, 26, 35, 84-85). It is undisputed that Supervisor Newman Caldwell directed one employee to attend the meeting (J.A. 185-186; 23) and that President Caldwell ordered over 25 employees, who had left the meeting, to return to it (J.A. 186; 35, 54). These employees, apparently

dissatisfied with what was going on, left the meeting and returned to their respective work stations in the plant (J.A. 186; 35, 53-54, 55). When they began working, President Caldwell told them: "You better go back over there and vote or else, and if you don't you will never have a chance to vote again." (J.A. 186; 54, 35, 45). President Caldwell was "very angry" at the time and his order was "shouted" (J.A. 186; 54). It is also uncontradicted that Supervisor Caldwell and Plant Superintendent Bacon directed the employees to return to the meeting and vote (J.A. 186; 56, 58-59). Thereafter, the employees went back to the meeting and remained to its conclusion (J.A. 186; 35, 45, 55).

Moreover, as detailed above, pp. 5-8, management personnel, throughout the Bakery Workers' organizational campaign, encouraged employees to support the Association and discouraged employees from supporting the Bakery Workers. Shortly before the election, supervisors wore Association badges and signs in the Wichita plant and pinned such badges and signs on employees. In addition, after the Bakery Workers sought to set aside the May 5 election by filing objections to conduct affecting the results of the election, the Company granted the wage increases provided for in the contract negotiated with the Association, retroactive to February 15, 1965.

#### *D. The discharge of Richardson*

The Company hired Ina Faye Richardson to work in its Wichita plant on May 10, 1963 (J.A. 179;

104). From the start of the Bakery Workers' organizational campaign in November 1964, she gave them her support and solicited authorization cards on their behalf (J.A. 179; 95-96, 105, 107-108).

In mid-December 1964, two supervisors talked with Richardson about the Bakery Workers. Supervisor Rolfe told Richardson that she did not want her Christmas bonus taken away because of the Bakery Workers (J.A. 178; 105-106). The same day Supervisor Alexander talked with Richardson about the AFL-CIO and her "part in it" (J.A. 178). Alexander asked Richardson "if [she] actually thought the CIO could help [her] and [Richardson] said yes and . . . explained why [she] thought it could" (J.A. 178; 106). A few days after these conversations, Rolfe approached Richardson while she was at work and told her that, if she wanted a raise, she should have gone to Plant Manager Caldwell "instead of bringing in another [u]nion" (J.A. 178; 107).

On December 29, after working about 3 hours, Richardson became ill and was given permission to go home (J.A. 179; 109). She returned to her job on December 30 and, after working a little over 8 hours, again became ill, clocked out, and went to the lunchroom to wait for two other employees to finish so that she could ride home with them (J.A. 179; 98-99, 108). When Richardson clocked out, production had ceased but the work of cleaning up the machinery remained (J.A. 179; 111). While Richardson was in the lunchroom waiting for her ride, Plant Manager Caldwell came in and asked what she was doing sitting there (J.A. 179; 109, 111). Richard-

son explained that she was ill and Caldwell told her that she should not come to work the next day if she did not feel better (J.A. 179; 109, 111). Caldwell then went into the plant but returned in a few minutes and summarily discharged Richardson (J.A. 179; 109, 127).

After the General Counsel issued a complaint herein alleging, *inter alia*, that Richardson's discharge was unlawful, the Company reinstated Richardson in July 1965 (J.A. 181, n. 19; 88).

## II. The Board's Conclusions and Order

On these facts, the Board concluded that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees concerning their union activities, by electioneering on behalf of the Association, and by threatening employees with job reprisals and granting them benefits to discourage interest in the Bakery Workers.<sup>6</sup> The Board also concluded that the Company assisted, contributed support to, and interfered with the administration of the Association in violation of Section 8(a)(2) and (1) of the Act. Further, the Board concluded that the Company violated Section 8(a)(3) and (1) of the Act by discharging Ina Faye Richardson for her union activities. (J.A. 190-197, 204-205.)

---

<sup>6</sup> Because of such conduct during the critical period between February 26, 1965, the date the representation petition was filed, and May 5, 1965, the date the election was held, the Board directed that the election be set aside and that a new election be held when employees might freely choose a bargaining representative (J.A. 196, 201).

The Board's order requires the Company to cease and desist from the unfair labor practices found and from, in any other manner, interfering with its employees in the exercise of rights guaranteed by Section 7 of the Act. Affirmatively, the order requires the Company to withdraw and withhold all recognition from the Association as the collective bargaining representative of its employees unless and until it is certified by the Board. The order also requires the Company to make Richardson whole for any loss of earnings she may have suffered between December 30, 1965, the date of her discharge, and July 26, 1965, the date she was reinstated to her former position. Additionally, the order requires the Company to preserve certain payroll records and to post the usual notices. (J.A. 198-201, 205.)

#### SUMMARY OF ARGUMENT

I. There is an ample evidentiary basis for the Board's finding that the Company violated Section 8 (a)(1) and (2) of the Act. Upon learning that the Bakery Workers were seeking to represent its employees, the Company undertook an extensive campaign to dissuade its employees from giving their support to that labor organization. Employees were coercively interrogated about their union activities and threatened with job reprisals to discourage interest in the Bakery Workers. Concurrently, the Company urged employees to support the Association and, before the Board-conducted election, management personnel wore Association badges and signs on plant property and pinned such badges and signs on



employees. At the same time, employees were directed to remove pro-Bakery Worker emblems they were wearing. Wage increases and dues checkoffs were also employed by the Company as devices to compel continuing loyalty to the Association. Moreover, the Company attempted to secure ratification of the agreement it had reached with the Association by permitting the Association to hold a meeting for that purpose on Company property during working hours, by ordering employees to attend the meeting, and by paying them for the time spent at the meeting. This entire course of conduct offends the policy embodied in Section 8(a)(2) of the Act "to promote and preserve the independence of labor organizations" and "to accord to the employees an unhampered, uninfluenced right to determine their own labor affiliations." See *N.L.R.B. v. Ephraim Haspel*, 228 F. 2d 155, 156 (C.A. 2); *N.L.R.B. v. Burry Biscuit Corp.*, 123 F. 2d 540, 543 (C.A. 7).

There is no need here to review any of the Board determinations made in the representation cases initiated by Bakery Workers' petitions. Although the Company strenuously urges that the February 26 petition was untimely for a number of reasons, the net result of these arguments is simply to demonstrate that no election should have been conducted. But the Board did not find any violations here which rest upon the validity of the election; indeed, the election has been declared invalid by the Board because of Company interference. Nor is this a case where an employer has been found guilty of a violation because he recog-

nized or contracted with a union when another union's timely petition had raised a real question of representation. Compare *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060. Rather, this case presents a pattern of conduct in which employees have been subjected directly to coercive pressures aimed at subverting their free choice in representation matters. Whether any petitions were timely filed, or any real questions of representation ever raised, is immaterial since the Act prohibits such employer coercion even where there is only one union involved and even where no election may be conducted.

II. From the record it is clear that there is substantial evidence to support the Board's finding that the Company discharged Ina Faye Richardson because of her known support of the Bakery Workers. The Board's conclusion that the discharge was discriminatory is buttressed by the failure of the asserted reasons for the discharge to withstand scrutiny.

III. Contrary to the Bakery Workers' contention, the Board did not err in refusing to order the disestablishment of the Association and the reimbursement of dues. The evidence reveals that the Company illegally assisted the Association but did not dominate it. Likewise, while it is clear that the Company sought to compel continued employee adherence to the Association, the record does not compel the inference that employees would not have continued paying dues but for this unlawful conduct. Moreover, the Board properly denied the Bakery Workers' request that additional violations of Section 8(a)(2) and (1) be found, that special provisions be made for

notifying the employees of the Board's order herein, and that special facilities be made available to the Bakery Workers on Company property. The Board's order adequately remedies the Company's unfair labor practices and effectuates the policies of the Act. Absent a showing that the Board had no authority to issue this order, or that the provisions chosen must obviously fail to effectuate the Act's policies, the courts will not intervene to alter the Board's choice of remedial provisions.

### ARGUMENT

#### I. Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company Violated Section 8(a)(1) and (2) of the Act

Section 8(a)(2) of the Act invokes a "... clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible." *I.A.M., Lodge No. 35 v. N.L.R.B.*, 311 U.S. 72, 80. A clear breach of this legislative policy, we submit, is demonstrated on the record in this case.

From the start of the Bakery Workers' campaign to achieve representative status among the Company's employees, the Company made plain its hostility to that union and its insistence that employees remain loyal to the Association. Employees were repeatedly subjected to coercive interrogation about their activities on behalf of Bakery Workers (J.A. 60-61, 100,

114-115) and threatened with a plant closing, loss of overtime pay, or discharges in order to discourage such activities (J.A. 33-34, 49, 100, 114-118). A wage increase was granted to employees for the purpose of inducing them to withhold their support of the Bakery Workers (J.A. 169) and an employee was discharged because of her continued support of that union.<sup>7</sup>

Furthermore, when the Company and the Association had reached agreement on the terms of the new bargaining contract, the Company brought direct pressure to bear on the employees in order to compel them to ratify the agreement. Plant operations were suspended on the day of the ratification meeting, and employees were directed and paid to attend (J.A. 25, 26, 35, 50, 84-86). When a group of employees left the meeting in dissatisfaction, Company President Caldwell angrily ordered them back: "You better go back over there and vote or else, and if you don't you will never have a chance to vote again" (J.A. 35, 45, 53-55).

Finally, management personnel continued to intervene in the employees' choice of bargaining representative during the period immediately preceding the Board election. Supervisors criticized employees for wearing badges or stickers indicating their support for Bakery Workers (J.A. 18, 51-52, 60-61, 101-104, 117-118) while, at the same time, Company supervis-

---

<sup>7</sup> We show *infra* at pp. 24-27, that this employee's discharge was unlawfully motivated and not, as urged by the Company, a result solely of improper work performance.

ors were wearing Association signs and badges and pinning such emblems on other employees.

On such a record, the Board was clearly entitled to find violations of Section 8(a)(2) and (1).<sup>\*</sup> Here, as in *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278, it must be noted that:

Apart from the issues raised by petitioners' affirmative defense, the proceedings reflect a flagrant example of interference by the employers with the expressly protected right of their employees to select their own bargaining representative."

Accordingly, we now turn to the affirmative defenses raised here.

First, the Company complains that the Board has invoked its *Midwest Piping* doctrine so as to impose "an outright ban upon the Company in its dealings with the Association" (Br. 12), whereas that doctrine "can be only applied when an employer is presented with rival, conflicting claims that raise a real question of representation" (Br. 13). The bulk of the Company's argument consists of an effort to show that the petition filed by Bakery Workers was untimely or otherwise inadequate to raise a real question of representation (Br. 18, *et seq.*). The Com-

---

<sup>\*</sup> *I.A.M., Lodge 35, supra*, 311 U.S. at 75-79; *Gulf Bottlers, Inc.*, 127 NLRB 850, 861, *enf'd sub nom. Int'l Union of United Brewery, etc. v. N.L.R.B.*, 298 F. 2d 297, 300, 111 App. D.C. 383, 386; *N.L.R.B. v. Sellers*, 346 F. 2d 625, 631 (C.A. 9); *N.L.R.B. v. Park Edge Sheridan Meats, Inc.*, 323 F. 2d 956, 957 (C.A. 2); *Revere Copper & Brass, Inc. v. N.L.R.B.*, 324 F. 2d 132, 136 (C.A. 7); *N.L.R.B. v. L. Ronney & Sons*, 206 F. 2d 730 (C.A. 9), *cert. denied*, 346 U.S. 937; *N.L.R.B. v. Braswell Motor Freight Lines*, 209 F. 2d 622 (C.A. 5).



pany's contention is based upon a series of misconceptions.

*Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060, 1069-1071, holds that an employer violates Section 8(a)(2) and (1) *by conferring recognition upon or executing a contract with one of several rival unions when a real question of representation has been raised*. Such employer conduct, in the Board's view, gives the benefitting union a marked advantage over its rivals, in derogation of the general statutory policy embodied in Section 8(a)(2). "The rule is a direct outgrowth of the parent doctrine of employer neutrality in matters relating to employees' choice of a bargaining representative." *N.L.R.B. v. National Container Corp.*, 211 F. 2d 525, 536 (C.A. 2). Hence, where the circumstances are such as to raise a real question concerning representation, an employer is forbidden to deal with either of the rival unions until the question has been resolved under appropriate statutory procedures. The federal courts have consistently approved this Board doctrine, although they have, on occasion, disagreed that the situation presented showed the existence of a real question of representation so as to warrant application of the doctrine.<sup>9</sup>

---

<sup>9</sup> *N.L.R.B. v. Signal Oil & Gas Co.*, 303 F. 2d 785 (C.A. 5); *District 50, UMW v. N.L.R.B.*, 234 F. 2d 565, 569 (C.A. 4); *St. Louis Independent Packing Co. v. N.L.R.B.*, 291 F. 2d 700, 704 (C.A. 7); *Ohio-Ferro-Alloys Corp. v. N.L.R.B.*, 213 F. 2d 646, 649-651 (C.A. 6); *N.L.R.B. v. National Container Co.*, 211 F. 2d 525, 536 (C.A. 2); *N.L.R.B. v. Crowley's Milk Co.*, 208 F. 2d 444 (C.A. 3); and see *Local 483, Boilermakers*

But this doctrine is not essential to support any of the Board's unfair labor practice findings in this case. Nothing in the Board's decision purports to find unlawful the Company's continued recognition of and bargaining with the Association. Indeed, as the Trial Examiner expressly pointed out (J.A. 192-193), "... the Board's *Midwest Piping* rule afforded no impediment to Respondent [Company] and Association agreeing upon contract terms." Rather, the Board limited its findings of violation to those coercive acts of the Company, directed against the employees, which were designed to interfere with a free choice of representatives. The negotiation of new contract terms, in this case, was not found unlawful and, therefore, no occasion exists to invoke or review the *Midwest Piping* rule.<sup>10</sup>

---

v. *N.L.R.B.*, 109 U.S. App. D.C. 382, 384, 288 F. 2d 166, 168, cert. denied, 368 U.S. 832. Compare *Cleaver Brooks Mfg. Corp. v. N.L.R.B.*, 264 F. 2d 637, 642 (C.A. 7), cert. denied, 361 U.S. 817; *N.L.R.B. v. Air Master Corp.*, 339 F. 2d 553 (C.A. 3).

<sup>10</sup> In finding unlawful the Company's coercive efforts to obtain employee ratification of the agreement negotiated with the Association, improper electioneering and dues checkoff, the Trial Examiner stated that the Company had thereby failed to comply with its duty to refrain from giving a labor organization improper assistance, "under the rule of *Midwest Piping*" J.A. 193. But it is clear that the impropriety of the Company's conduct is established merely by reference to the "parent doctrine of employer neutrality" (*National Container, supra*) and the Examiner presumably referred to *Midwest Piping* only as illustrative of that policy. For the conduct involved here is plainly in derogation of the Act without regard to whether a timely petition had been filed so as to raise a real question of representation and the precise holding

For similar reasons, the Company errs in requesting the Court to review a Board determination, made during the representation proceedings initiated by the Bakery Workers' petition of February 26, that the February 26 petition was timely filed and that an election was not barred by the contract reached between the Association and the Company (Br. 18-25). As the Company points out, (Br. 18) judicial review of those representation case issues would be essential if the Board had found unfair labor practices based upon *Midwest Piping*, (i.e., contracting with one union in the face of a timely petition filed by a rival union). But no such violations were found.

To be sure, the Board did decide to conduct an election based upon the determinations which the Company here assails at length. But that does not, of itself, make this occasion an appropriate one for judicial review of those determinations. *Hendrix Mfg. Co. v. N.L.R.B.*, 321 F. 2d 100, 106 (C.A. 5); and see *Boire v. Greyhound Corp.*, 376 U.S. 473; *A.F.L. v. N.L.R.B.*, 308 U.S. 401. The Bakery Workers were not certified as a result of the election and have not demanded recognition based upon its results. The Company is not here required to defend against any refusal to bargain charges. Nor is the Company charged with violating the Act by bargaining with

---

of *Midwest Piping* is, accordingly, not an essential element of decision. See *N.L.R.B. v. Burke Oldsmobile, Inc.*, 288 F. 2d 14, 16 (C.A. 2): "No petition for an election had been filed . . . but it does not follow that the occasion was not one which gave the Board power to act under Section 8(a)(1) and (2)".

one union when the contract bar doctrine would have dictated bargaining only with another. Compare *N.L.R.B. v. Marcus Trucking Co.*, 286 F. 2d 583, 586 (C.A. 2). The only present relevance of the Board election—which the Board itself has now characterized as void—is that it constituted an occasion during which the Company employed coercive techniques designed to influence the employees' choice of representative. Whether the Board should have dismissed the election petition as untimely or because of a contract bar are irrelevant questions here since the election itself resulted in no adverse consequences or Board sanctions against the Company. And, plainly, any Board error in deciding to conduct an election would not license coercive employer efforts to influence employee sentiment.

Besides, the determinations complained of are clearly within the Board's discretion. The Board's contract bar doctrine aims at an accommodation between the need for stability in labor relations and the right of employees to select their own representatives. To this end, the Board has, from time to time, issued detailed rules under which existing bargaining contracts will serve for a period to bar the conduct of representation elections. See *Leedom v. I.B.E.W., Local 108*, 107 App. D.C. 357, 278 F. 2d 237, 242. Consistently, however, the Board has declined to permit oral or unsigned agreements to serve as a bar. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161. In the last cited case, the Board also announced that a contract which, by its own terms, requires ratification will also be ineffective to bar an

election unless it is ratified prior to the filing of a petition. 121 NLRB 1163. In the instant case, it is undisputed that the Association contract was not ratified before the filing of a petition. Accordingly, the Board could direct an election here consistent with its own rules. The Company argues here that the contract made ratification a condition *subsequent*, not a condition *precedent*, to contract effectiveness. This is immaterial: as the *Appalachian Shale* decision itself explains, real stability in labor relations requires a bargaining contract containing a sufficiently precise and fixed charter to guide the day-to-day relationships of the parties. The Board's concern that an unratified contract (in a case where ratification is deemed vital by the parties) fails to provide such a stabilizing influence is equally applicable to contracts where the ratification is a condition subsequent.<sup>11</sup>

---

<sup>11</sup> The Company also contends that the Board improperly applied its *Deluxe Metal* rule (121 NLRB 995) and thereby deprived the Company and the Association of sufficient time in which to negotiate an agreement (Br. 20-24). This contention, too, is misdirected. As the Company apparently acknowledges, the sole consequence of any Board "error" in applying the *Deluxe Metal* rules would be that the February 26 petition for an election was actually untimely (Br. 23). But, as already shown, that is wholly immaterial here. The propriety of the Board election is not at stake here, and this case does not present the question of whether the Board erred in deciding to conduct that election in response to the February 26 petition.

Besides, the *Deluxe Metal* theory advanced by the Company is lacking in merit. The Board doctrine embodied in that case established a 60-day insulated period, immediately preceding



## II. Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company Violated Section 8(a)(3) and (1) of the Act

The Board's finding that the Company discriminatorily discharged Ina Faye Richardson because of her activities on behalf of the Bakery Workers is also amply supported by the record. There can be no question but that the Company was firmly opposed to the Bakery Workers' organizational efforts and that it had no hesitancy about utilizing unlawful methods to thwart those efforts. Richardson's discharge, therefore, must be evaluated not merely in a context of the Company's opposition to the Bakery Workers but, even more significantly, in a context of the Company's demonstrated willingness to resort to illegal means to defeat that union. See *N.L.R.B. v. Dan River Mills*, 274 F. 2d 381, 384 (C.A. 5).

From the start of the organizational drive in November 1964, Richardson strongly supported and solicited cards for the Bakery Workers. The Company's knowledge of her union sympathies and activities is established by conversations between Richardson and management personnel. Supervisor Alexander spoke with her about the Bakery Workers and Richardson explained how she thought the Bakery Workers could

---

the expiration of an existing contract, during which the employer and the incumbent union could negotiate and execute a new contract without the intrusion of a rival petition. The Company's novel contention, never previously espoused by the Board, is that a rival petition ought to be dismissed under *Deluxe Metal* even where the employer and incumbent union have already agreed upon new contract terms before the petition is filed.

help the employees. Shortly before the discharge, Supervisor Rolfe told Richardson that, if she wanted a raise, she should have gone to Plant Manager Caldwell "instead of bringing in another Union" (J.A. 178; 107). Moreover, Plant Manager Caldwell admitted that, had he been called upon to draw up a list of those employees who supported the Bakery Workers, he would have included Richardson's name (J.A. 179-180; 123).

At the time of her discharge, Richardson had worked at the Company's Wichita plant for approximately 19 months. Except to the extent hereafter discussed, Richardson's job performance was not criticized. The reason given for Richardson's discharge was that she failed to work with her crew until the cleaning of the machines had been completed on December 30, 1964, and that she had engaged in improper conduct on two other occasions.

The record reveals that Richardson clocked out early on December 30; but production had stopped, she had already worked over 8 hours, and she felt ill. The day before, illness had forced Richardson to get permission to go home after working for about 3 hours. It is undisputed that Richardson was sick, and no evidence was adduced to show chronic absenteeism or malingering on her part.

While Richardson was sitting in the lunchroom on December 30 waiting for her ride home, Plant Manager Caldwell came in and asked what she was doing there. When Richardson explained that she was sick, Caldwell told her that if she felt no better the next day she should not report for work. Caldwell went

into the plant but minutes later he returned and summarily dismissed Richardson.

Caldwell testified that, after he went into the plant, he thought about two other incidents which had caused him to speak to Richardson about her work and decided that he should discharge her (J.A. 181; 119-120, 122-123). The first occasion for reprimand was in the late spring of 1964 (J.A. 180; 119). At the time, an employee named Jones reported to Caldwell that Richardson was throwing potatoes into a bin in a manner that made her fear she "could possibly get hit with them" (J.A. 180; 119). When Caldwell talked with Richardson about this complaint, Richardson explained that she did not realize that what Jones feared might actually happen and promised to take care in the future (J.A. 180; 119). According to Caldwell, Jones quit sometime in June, saying that she would not work under the conditions that Richardson created (J.A. 180; 120, 121). There is no evidence that Caldwell investigated to determine if this was the true reason Jones was quitting or said anything further to Richardson (J.A. 180; 120). The second asserted incident requiring reprimand was in mid- or late summer (J.A. 180; 119). Caldwell testified that he went into the plant to see about a commotion he heard and saw a group of employees standing around watching Richardson who was holding a bag of potato chips in each hand and was swinging her arms wildly and laughing (J.A. 180; 119). Caldwell asked what was going on to which Richardson replied that one of the employees had told her a funny story (J.A. 180; 119). Thereupon, Cald-

well asked Richardson to step into his office where he reprimanded her for disrupting production and warned her that this was her second reprimand and that, if it became necessary to speak to her again, he would discharge her (J.A. 180; 121). Richardson denied that this incident occurred and, because of the approach to the case he took, the Trial Examiner did not resolve the conflict in testimony (J.A. 180; 109-110, 112, 128).

In view of the fact that production had already stopped on December 30 when Richardson clocked out, that Caldwell's only complaint could have been that Richardson did not assist in cleaning the machinery, that Caldwell did not censure her for this when he first spoke to her in the lunchroom, that there was no basis for believing that Richardson was malingering, and that any supposed offense was totally unrelated to the previous incident or incidents for which Richardson had been reprimanded, the Board concluded that Richardson's failure to work until the machines were cleaned was not the motivating cause of her sudden termination but a mere pretext to obscure the fact that Caldwell seized upon this opportunity to rid the Company of an active supporter of the Bakery Workers. We respectfully submit that the Board's conclusion of discriminatory discharge is entitled to affirmance by this Court. *United Brewery Workers v. N.L.R.B.*, 111 U.S. App. D.C. 383, 386-388, 298 F. 2d 297, 300-302, cert. denied, 369 U.S. 843.

### III. The Board's Order Is Valid and Proper

It has long been recognized, and recently reaffirmed in *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 215-216, that the Board's remedial power is a broad discretionary one, subject only to limited judicial review. *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344. "The relation of remedy to policy is peculiarly a matter for administrative competence. . . ." *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194. Hence, the Board's order will not be disturbed "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act". *Virginia Electric Power Co. v. N.L.R.B.*, 319 U.S. 533, 540. We submit that no such showing has been made in this case.

To remedy the violations found here, the Board issued a broad cease-and-desist order, directed the Company to withdraw and withhold recognition from the Association unless and until it is certified by the Board and to refrain from giving effect to the 1965 contract with the Association, and provided for the payment of back pay to the unlawfully discharged employee.

The Company does not seriously challenge the propriety of these remedial provisions if the Board's unfair labor practice findings are sustained, except to complain that the Section 8(a)(1) violations found are so "isolated" that a broad cease and desist order is unwarranted. But the very case relied upon by the Company, *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, proves the appropriateness of the Board's



order. For here, as the evidence clearly demonstrates and the Board expressly found (J.A. 197), the totality of the company's unlawful conduct demonstrates the soundness of a broad order: other violations, besides those specifically found here, may fairly be "anticipated from the course of [the Company's] conduct in the past" *Express Publishing, supra*, 312 U.S. at 437. The Company plainly errs in characterizing its violations as "isolated." A more strenuous challenge to the propriety of the Board's order is presented in No. 20,189 by the Bakery Workers, to which we now turn.

Bakery Workers contend that the Board should have characterized the Association as a "dominated" union and, accordingly, ordered its disestablishment. As the Supreme Court has pointed out, the Board orders this more stringent remedy only where the employer's unlawful relationship to the union is such that the latter may be "deemed inherently incapable of ever fairly representing its members". *N.L.R.B. v. District 50, U.M.W.*, 355 U.S. 453, 461. Obviously, such a determination is one which requires scrutiny of many evidentiary factors and the application of expert judgment. This record does not disclose a situation in which the Board can be said to have failed in its evaluation.

The unlawful conduct described *supra*, pp. 5-10, consists in the main of Company efforts to discourage employees from abandoning their established bargaining representative, the Association. But the record is devoid of proof that the Association had been initiated or organized under the employer's auspices, that it had functioned only as the Company's puppet,

that it relied upon Company largesse for its financial existence, or that it was regarded by employees as a mere tool of the Company. The Board's determination that the Association was not a dominated labor organization is consistent with its own precedents and the decisions of the courts in other similar situations. See *N.L.R.B. v. Prince Macaroni Mfg. Co.*, 329 F. 2d 803 (C.A. 1); *N.L.R.B. v. Thompson Ramo Wooldridge, Inc.*, 305 F. 2d 807 (C.A. 7); *N.L.R.B. v. Chardon Telephone Co.*, 323 F. 2d 563 (C.A. 6); *N.L.R.B. v. Wemyss*, 212 F. 2d 465, 471-472 (C.A. 9) and cases cited.

Bakery Workers concede that "no single fact, taken in isolation, is controlling" here (Br. 16). But their effort to upset the Board's finding consists, nonetheless, primarily of emphasis upon Company President Caldwell's interference with the ratification meeting of March 5, 1965. While that conduct was obviously in derogation of *the employees'* rights to an untrammelled choice, it hardly tends to prove that *their bargaining agent* was actually dominated. The Association officers protested Caldwell's acts and resisted Caldwell's effort to convene the meeting (J.A. 183-185); besides, the record does not suggest that the Association satisfied Caldwell's expressed object in calling the meeting—i.e., to get the contract ratified—during or as a result of that meeting. It was not until June 14 that the Association notified the Company that the contract had been ratified by its members (J.A. 189-190; 168).

Moreover, Bakery Workers make no effort to explain away the facts that the Association had been the certified bargaining representative of 650 Com-

pany employees for many years and had negotiated successive bargaining contracts containing compulsory membership and dues check-off provisions. In these circumstances, we are required to assume that, at least prior to unlawful conduct beginning in November 1964, the Association was the lawful majority representative of these employees. *Local Lodge No. 1424, I.A.M. v. N.L.R.B.*, 362 U.S. 411. The Company's unlawful conduct during the months that followed must be considered against that background; in that posture, we submit, it is plain that the Association was not rendered "inherently incapable of ever fairly representing its members" *District 50, U.M.W., supra*.

Bakery Workers also complain that the Board erred in refusing to order that Association dues withheld from employee wages after March 2, 1965, be reimbursed. But the Board was not required to make such a reimbursement order in the circumstances of this case.

Two Supreme Court decisions supply the controlling principles here. In *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 539-544, the Board's reimbursement order was approved. There, the employer was responsible for the very creation of the labor organization to which the dues were paid; he had provided "its initial impetus and direction" (319 U.S. 540), contributed to its support, and "quickly agreed" (*ibid.*) to compel employees, as the price of continued employment, to assume the cost of maintaining the organization he dominated. Reimbursement there seemed "manifestly reasonable" (319

U.S. 541) to the Court since it "returns to the employees what has been taken from them to support an organization not of their free choice" (*ibid.*). In response to the contention that the remedy was excessive because the employees had received benefits from the labor organization, the Court explained that it was possible to assume the contrary. "These are considerations for the Board to decide according to its reasoned judgment" (319 U.S. 544).

Significantly, the Court listed eleven cases in which dues reimbursement orders had previously been denied and expressly disclaimed any intention of disapproving those results. 319 U.S. 545. As the Ninth Circuit later explained, "What the Court did in *Virginia Electric* was to point out that such reimbursement orders were proper where they benefitted specific employees shown to have made their payments of dues under compulsion . . .". *Morrison-Knudsen Co. v. N.L.R.B.*, 276 F. 2d 63, 76.

In *Local 60, Carpenters v. N.L.R.B.*, 365 U.S. 651, the Board was held to have exceeded its authority in requiring dues reimbursement. There, the respondent union was party to a discriminatory hiring agreement which was prohibited by the Act. But the Supreme Court explained that:

"The unions in the present case were not unlawfully created . . . there is no evidence that any of them coerced a single employee to join the union ranks or to remain as members. All of the employees affected by the present order were union members when employed on the job in question. So far as we know, they may have

been members for years on end." (365 U.S. 654).

These two Supreme Court decisions establish that the Board may properly impose a reimbursement order when the record supports the inference that the respondent's unlawful conduct coerced employees to pay the required sums, but that the Board errs in "reimbursing a lot of old-time union men" (*Local 60*, 356 U.S. at 655) without a showing that the payments were attributable to the unlawful conduct committed.

Application of the foregoing principles to the facts of this case supports the Board's determination that "a sufficient predicate" (J.A. 198, n. 39) for the reimbursement order has not been established. As already shown, the affected employees had lawfully and voluntarily selected the Association as their bargaining agent and agreed, well before the occurrence of any unlawful conduct, to the check-off of dues from their wages. To infer that the employees would have discontinued paying dues after March 1965, absent the Company's unlawful conduct, requires a more substantial evidentiary basis than this record provides. Bakery Workers would apparently presume that all the dues payments subsequent to the Company's unlawful campaign of interference were a consequence of that conduct. But there is plainly room, on this record, for a contrary inference. At the least, it is a question for the Board's "reasoned judgment". *Virginia Electric, supra*, 319 U.S. at 544.

See *N.L.R.B. v. Local 294, Teamsters*, 279 F. 2d 83, 86-87 (C.A. 2); *N.L.R.B. v. Halben Chemical Co.*,



279 F. 2d 189, 192 (C.A. 2); *N.L.R.B. v. Burke Oldsmobile Inc.*, 288 F. 2d 14, 16 (C.A. 2); *N.L.R.B. v. Marcus Trucking Co.*, 286 F. 2d 583, 595 (C.A. 2); *N.L.R.B. v. Shedd-Brown Mfg. Co.*, 213 F. 2d 163, 171 (C.A. 7); and *Perry Coal Co. v. N.L.R.B.*, 284 F. 2d 910 (C.A. 7), cert. denied, 366 U.S. 949, where reimbursement orders were denied because there was no showing that the unlawful conduct actually coerced any employees into paying dues. See also, *Meyers Bros. of Missouri, Inc.*, 151 NLRB 889, 890-891, where the Board deemed reimbursement an appropriate remedy.

The cases relied upon by Bakery Workers are not inconsistent with the foregoing analysis. *N.L.R.B. v. Revere Metal Art Co.*, 280 F. 2d 96 (C.A. 2), is a case where a union was granted exclusive recognition and a bargaining contract containing a compulsory membership provision, although a majority of unit employees had never authorized it to represent them. The employer then summoned the employees to the plant foreman's office, showed them check-off authorization cards, and told them to sign. As the court explained in *Revere*, this "showed coercion in the most literal sense" (280 F. 2d 100); the court enforced a reimbursement order because there was "substantial evidence that a majority of the employees had been coerced into joining the union".

*O'Neill International Detective Agency v. N.L.R.B.*, 280 F. 2d 936 (C.A. 3) is a similar case: the court there emphasized that the union had never achieved an uncoerced majority before being granted a contract providing for check-off privileges and union-security. Quoting from *N.L.R.B. v. U.S. Steel Corp.*,

278 F. 2d 896, 899 (C.A. 3), cert. denied, 366 U.S. 908, the court stated that reimbursement was proper:

... because the union is an illegitimate union from the beginning. Its existence is illegal. The dues themselves are the fruits of the unfair labor practice, for in the absence of the unlawful practice there would have been no union; *a fortiori*, there would have been no dues paid to it" (280 F. 2d at 948).

Clearly that analysis is not applicable here.

Bakery Workers find it ironic that, although the Company was held to have violated Section 8(a)(2) by checking off dues, the Board's order does not compel reimbursement. (Br. 13). As we have shown, the law does not require the Board to overlook the fact that the employees may well have continued paying dues here even absent the Company's improper attempt to insure that result. Besides, Bakery Workers misstate the case in claiming that the Company's "illegal act is in no way corrected" (Br. 13). The remedial provisions of the Board's order, summarized *supra*, are clearly designed to restore the affected employees to the *status quo* and insure them a new opportunity to select a bargaining agent free from any employer compulsion. To that end, the order prohibits, *inter alia*, any further recognition of the Association and check-off of dues to that organization.

Bakery Workers also contend that the Board erred in not directing the Company to post the prescribed notice (J.A. 202-203) at its distribution centers, to mail such notices to the employees, to grant Bakery Workers access to plant bulletin boards, and to make

available, upon request, facilities for employee meetings during working hours.<sup>12</sup> Bakery Workers, however, do not present any supporting evidence to show that the Board's directive with regard to notifying the employees is inadequate. The Board's decision and order in *H. W. Elson Bottling Co.*, 155 NLRB No. 63, 60 LRRM 1381, on which Bakery Workers rely to support their assertion that notices should be mailed to the employees is inapposite. In that case, the employees were interviewed individually and the Board, therefore, concluded that individual notices should be sent out to remedy the employer's unfair labor practices. The unfair labor practices herein do not require such an order. In addition, no specific directive requiring the Company to make its bulletin boards and its facilities available to Bakery is necessary. The order enjoins the Company from assisting the Association. If plant bulletin boards and facilities are made available to that organization, similar provisions will have to be made for Bakery Workers. Further, nothing in the record indicates that unions face unusual problems in communicating with employees off the Company's premises because of conditions at the places where the Company's installations are located.

In this case, therefore, the teachings of *Amalgamated Clothing Workers v. N.L.R.B.* (*Hamburg Shirt*

---

<sup>12</sup> Bakery Workers' contention that the Board should have found the distribution of certain letters shortly before the election an additional violation of Section 8(a)(2) and (1) is without merit and, in any event, would not affect the scope of the order.

Corp.) App. D.C. , F. 2d , 63  
LRRM 2581, 2585, are clearly in point:

"The Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise. We cannot insist that the traditional relief provided here will be so ineffective to enforce the policies of the Act as to be insufficient as a matter of law."

### CONCLUSION

For the reasons stated, it is respectfully submitted that the Company's petition for review in Case No. 20,347 and Bakery Workers' petition for review in Case No. 20,189 should be denied, and that a decree should issue enforcing the Board's order in full.

ARNOLD ORDMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*

GARY GREEN,  
VIVIAN ASPLUND,  
*Attorneys,*

*National Labor Relations Board.*

JANUARY 1967.

## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

## RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

## UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . .



## REPRESENTATIVES AND ELECTIONS

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), . . .

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

## PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: \* \* \*

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or

transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . .

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part of relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the

United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

See 555 Fed 727  
in initiated case  
@ 729-3

BRITLY BRILL

WITH

FOR THE

OF THE

INTERNATIONAL  
ASSOCIATION  
OF  
MILLIONERS

United States Court of Appeals  
for the District of Columbia

FILED 1967

Nathan J. Anderson  
CLERK

Application to  
the National Labor Relations  
Board

Employer  
New York & Edison  
New Hampshire Ave., N.W.  
Washington, D.C.

Browne  
Willard  
BROWN, FANE, BRITT & BROWNE  
Power & Light Building  
St. Louis, Missouri

ATTORNEYS FOR GUY'S FOODS, INC.

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 20,189

AMERICAN BAKERY & CONFECTIONERY WORKERS INTERNATIONAL  
UNION AND LOCAL UNION NO. 245, ABC, AFL-CIO,  
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

GUY'S FOODS, INC., INTERVENOR

---

No. 20,347

GUY'S FOODS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

---

On Petitions to Review and on Cross-Petition to  
Enforce an Order of the National Labor Relations  
Board

---

REPLY BRIEF FOR GUY'S FOODS, INC.



## INDEX

	<u>Page</u>
INTRODUCTION	1
SUMMARY OF ARGUMENT	1
ARGUMENT	
A. Reply to Board's Brief	2
B. Reply to Bakery Workers Brief	7
C. Conclusion	10

## AUTHORITIES CITED

*Appalachian Shale Products Co., 121 NLRB 1160 (1958)	5, 6
*B. M. Reeves Company, Inc., 128 NLRB 320 (1960)	3, 4, 5
Boston Machine Works Company, 89 NLRB 59, 61 (1950)	8
Chicago Rawhide Mfg. Co. v. N.L.R.B., 221 F.2d 165 (7th Cir. 1955)	4
Iowa Beef Packers, Inc. v. N.L.R.B., 333 F.2d 176, 181 (8th Cir. 1964)	2
Meat and Provision Drivers, Local 626, etc., 126 NLRB 572, 573 (1960)	8
*N.L.R.B. v. Metropolitan Life Ins. Co., 380 U.S. 438 (1965)	7
*N.L.R.B. v. Swift & Co., 294 F.2d 285, 288 (3rd Cir. 1961)	4
*Retail Clerks Union, R.C.I.A. v. N.L.R.B., 121 U.S.App.D.C. 140, 348 F.2d 369, 370 (D.C.Cir. 1965)	7
Shea Chemical Corp., 121 NLRB 1027 (1958)	2
William D. Gibson, 110 NLRB 660 (1954)	2
William Penn Broadcasting Co., 93 NLRB 1104 (1951)	2
*Authorities chiefly relied upon.	

## I. INTRODUCTION

This proceeding is before the Court upon two petitions to review the National Labor Relations Board's single decision and order issued against Guy's Foods, Inc. ("the Company"). The Company, the petitioner in No. 20,347, previously filed its brief. American Bakery and Confectionery Workers International Union ("the Bakery Workers"), the petitioner in No. 20,189, also filed a brief. The Board, after the petitions were consolidated, cross-petitioned for enforcement and filed its answering brief. The Company was permitted to intervene in No. 20,189.

This brief replies to certain contentions raised by the Board in its answering brief in No. 20,347, and replies to certain contentions raised by the Bakery Workers in No. 20,189.

## II. SUMMARY OF ARGUMENT

The Board in its brief attempts by post hoc rationalization to avoid the manifest error below. The Board based its 8(a)(2) finding and decision squarely on the Midwest Piping doctrine, and the essential issues of contract bar and real question of representation must be decided. The existence of a real question of representation is a necessary predicate to the finding of unlawful assistance on the facts of this case. Under established Board precedent, the February 14 agreement barred the February 26 Bakery Workers' petition from raising a real question of representation.

The Bakery Workers requests a finding of domination and an order for the reimbursement of dues checked off. However, the issue of domination was not pleaded or litigated, and the Bakery Workers failed to establish any predicate for a reimbursement order. On the contrary, the check-off of dues was required by a valid contract and was not improper.

A. REPLY TO BOARD'S BRIEF

Board counsel's restatement of the ratio decidendi of the Board's unlawful assistance finding below is flagrantly erroneous. (BR. 16). The Board's 8(a)(2) holding was based squarely on the Midwest Piping doctrine. The Board adopted, after challenge and review, the Trial Examiner's reasoning and findings in their entirety. The Trial Examiner prefaced his 8(a)(2) holding by setting out the Midwest Piping doctrine.<sup>1</sup> The opinion then demonstrates expressly that Midwest Piping, the existence of a real question of representation, and the validity of the February 14 contract were essential to his holding:

Bound, as I am, by the Board's decision that the agreement of February 14 did not result in a binding contract prior to the filing of the [February 26] petition, and notice thereof to Respondent, it follows

---

<sup>1</sup>The Midwest Piping doctrine as stated by the Trial Examiner is not challenged by the Company, only its application to the facts of this case. Board counsel attempt to limit the doctrine to the facts of the case, Midwest Piping & Supply Co., Inc., 63 NLRB 1060, 1069-71 (1945); but the Board, in a long line of progeny, has altered, modified, extended and limited this doctrine. Compare, William Penn Broadcasting Co., 93 NLRB 1104 (1951); William D. Gibson Co., 110 NLRB 660 (1954); Shea Chemical Corp., 121 NLRB 1027 (1958); B. M. Reeves Company, Inc., 128 NLRB 320 (1960). All that can be said is that the doctrine derives its name from the early case. See Iowa Beef Packers, Inc. v. N.L.R.B., 333 F.2d 176, 181 (8th Cir. 1964) for a brief history.

that the rule of Mid-West Piping, supra, placed Respondent under the duty to refrain from giving assistance to Association, or promoting the latter's prestige in the eyes of the employees. That Respondent failed in this duty is clear on the record. (J.A. 193) (emphasis added).

Contrary, if the February 14 agreement was binding prior to the filing of the Bakery Workers petition on February 26, then the Company was not placed under the duty to refrain from giving assistance to the Association, and the Board so stated:

Had their agreement been ratified by Association before February 26, when the petition by Bakery Workers was filed, Respondent could have continued to deal with Association as the representative of its employees. (J.A. 193)

There is no parent duty of neutrality if the certified status as bargaining agent of the Association is not challenged by the Bakery Workers petition, which was the only event capable of raising a real question of representation. B. M. Reeves Company, Inc., 128 NLRB 320 (1960) is precisely in point. In that case, the complaint alleged that the Company unlawfully assisted the incumbent Committee by prematurely extending the contract, by promising and granting benefits, by granting time and property to hold Committee meetings, and by permitting the Committee to solicit approval of the contract during working hours. The Board, as it should have done in the instant case, refused to find unlawful assistance and stated:

The employer's conduct is illegal only if the recognition and contract were accorded a minority union or accorded the union at a time when a real

question concerning representation existed. Absent a question concerning representation or an effective challenge of the status of the contracting union as a bona fide representative of the majority of the employees in the unit, the reciprocal concessions reflected in the contract must be taken as the result of proper collective bargaining. 128 NLRB at 322 (emphasis added).

Absent such challenge, the Company is required to bargain collectively with the incumbent certified Association continuously to accomplish "one of the principal purposes of the Act, which is cooperation between management and labor." Chicago Rawhide Mfg. Co. v. N.L.R.B., 221 F.2d 165 (7th Cir. 1955). In B. M. Reeves, the Company not only executed a contract with the incumbent Committee but promised and granted benefits to its employees, permitted the Committee to use company time and property to hold meetings and obtain approval of the contract. The Board correctly reasoned, if these acts have "any tendency to encourage employees to become or remain members of the incumbent, the result is merely a possible and natural advantage which inheres in the position of every lawful bargaining agent and constitutes no interference with the employees' free choice of representatives under the Act," (128 NLRB at 322) and specifically held, "In the circumstances, we likewise find no violation in Respondent allowing the use of company time and property for the Committee to meet and to solicit employee signatures in approval of the contract." Ibid. at 323.

Thus, the Board and Courts have held the Board must show a real question of representation exists to transmute conduct required by the Act into proscribed conduct. N.L.R.B. v. Swift & Co.,



294 F.2d 285, 287 (3rd Cir. 1961); William Penn Broadcasting Co., 93 NLRB 1104 (1951). But the Board here failed to demonstrate that such a question existed or that the Association's certified status was effectively challenged. Here the Board cannot point to "a question concerning representation" or "an effective challenge" to the Association's status as the certified collective bargaining agent of the Company's employees. The Bakery Workers' representation petition of February 26 raised no such question or challenge, because it was barred by the February 14 contract and, in addition, it was not timely filed.

The February 14 contract provided by its terms it was effective and binding from February 15. Membership approval was not essential to validity; indeed, failure to approve would have terminated the agreement. Thus, the agreement not only bars the February 26 petition; it imposed on the Company a duty enforceable under Section 301 of the Act to check off dues and to pay wage increases. The performance of this duty enforceable under the Act cannot be held to contravene Section 8(a)(2) of the Act. B. M. Reeves Company, Inc., supra.

Indeed, this agreement was valid and binding under the rules of interpretation and construction developed by the Board in contract-bar cases like the present. Appalachian Shale Products, 121 NLRB 1160 (1958). There the Board held a contract is valid and binding from the date of execution, unless ratification is by the terms of the contract an express condition precedent to contractual validity. The Board is presumed to know the meaning of

the term "express condition precedent." Expressio unius est exclusio alterius. Thus, the Board held if the contract is silent as to membership approval, or if approval is found to be an implied condition precedent, an implied condition subsequent or an express condition subsequent, as here, the contract will be valid, binding and a bar to representation petitions. This rule was not adopted as Board counsel urges to provide a "fixed charter to guide the day-to-day relationships of the parties." (BR. 23). On the contrary, the rule was adopted with cases like this in mind, because "every effort should be made to eliminate the litigation of factual issues such as these in representation cases and to give greater weight to the language of the contract itself." 121 NLRB at 1162. Thus, Board counsel err by urging that the reasoning in Appalachian Shale "is equally applicable to contracts where the ratification is a condition subsequent" and the February 14 contract is no bar.

Board counsel, by arguing that the existence of a real question of representation and the Midwest Piping is not essential to support any of the Board's findings (BR. 20; fn. 10), are attempting by post hoc rationalizations to justify the manifest error below. The Board's clearly articulated reasons cannot be avoided. ". . . the integrity of the administration process requires 'that courts may not accept appellate counsel's post hoc rationalizations for agency action'. . . . For reviewing courts to substitute counsel's rationale or their discretion for that of the Board is incompatible with the orderly function

of the process of judicial review." N.L.R.B. v. Metropolitan Life Ins. Co., 380 U.S. 438, 444 (1965).

B. REPLY TO BAKERY WORKERS BRIEF

The Bakery Workers seek a finding that the Company dominated the Association and that as a result the Association should be disestablished. Such a contention is not properly before the court at this time, because domination was not alleged in the complaint (J.A. 21, 27), and was not litigated during the course of the hearing. Before such a question could be resolved, additional evidence would be required, including examination of the Association's organization, constitution, bylaws, meetings, officers and financial affairs. Because it was not alleged and because the Trial Examiner refused to receive evidence of domination (J.A. 21), it would have been inappropriate for the Company or the Association to offer evidence rebutting such allegation.

What the Bakery Workers seek here is a circuitous method of bypassing the General Counsel's authority to issue complaints. Only the General Counsel has the authority to issue a complaint, and his refusal is not subject to review by the courts, even through the "back door." Retail Clerks Union, R.C.I.A. v. N.L.R.B., 121 U.S.App. D.C. 140, 348 F.2d 369, 370 (D.C.Cir. 1965). The difference between assistance and domination is one of kind, not of degree, and domination to be found must be spelled out in the complaint. The Bakery Workers filed a charge alleging domination but the General Counsel refused to issue a complaint. The

charging party has no right to litigate, in this proceeding, a matter already disposed of by the General Counsel. To allow such a procedure in this instance would be comparable to allowing a charging party to litigate the discharge of ten employees as violations of Section 8(a)(3) when the General Counsel had issued a complaint on only one such discharge.

The Bakery Workers also seek reimbursement of dues checked off by the Company. Irrespective of the other valid defenses of the Company, this claim must fail, because of the basic distinction between the concept of contract validity and a contract bar. A contract may be valid and binding between the parties but not a bar to an election. The Regional Director's determination with regard to the February 14, 1965, agreement, upon which the Bakery Workers rely here, could properly relate only to the contract bar question, since Regional Directors in representation proceedings have not been given the power by statute or the Board to make binding decisions on contract validity.

The Board has consistently declined to equate "contract-bar" with "contract validity." See Boston Machine Works Company, 89 NLRB 59, 61 (1950). Questions of contract validity, to the extent they are within the province of the Board, must be raised and litigated in unfair labor practice cases. See Meat and Provision Drivers, Local 626, etc., 126 NLRB 572, 573 (1960).

In the present case the Board has improperly equated contract bar determinations with contract validity questions and refused to give independent consideration to the issue of validity. The Board's resolution of this question of law is entitled to no special weight because no policy reasons are advanced for this mechanical adherence to the Regional Director's finding that the disputed clause is a condition precedent and dictum that the contract is invalid. Further, this court is more qualified than the Board to apply classic legal concepts of condition precedent and condition subsequent which involve no labor "expertise."

While the Board may have a right to change rules, such as the contract-bar rule, it has a duty to apply them uniformly until such change is made. A rule may not be changed by the inability to distinguish between a condition precedent and a condition subsequent.

Whatever the disposition of the other issues in this case, one of two contracts was necessarily in effect and valid, at all relevant times to date, at least with respect to the check-off provisions. The 1963 Agreement provided that in the event of notice to terminate, modify or amend, the Agreement would "continue in full force and effect until superseded by a new Agreement." (J.A. 156) Thus if it be assumed that the 1965 Agreement was not completed and did not become effective, the 1963 Agreement continued to control wages, hours, and other



conditions of employment, including the checking off of dues.

However, the parties did execute an agreement continuing the checkoff provisions, which was valid and effective at all relevant times. It is undisputed that the negotiations by the Association and the Company were proper through at least February 14, 1965. On that date, the parties executed a new Agreement, which provided that it "shall be effective February 15, 1965." (J.A. 160) Continued checkoff under that Agreement was proper and required, unless and until the Association gave notice to the Company that the agreement had been rejected by the membership (J.A. 160). No such notice was ever forthcoming and in fact, the Agreement was approved by the membership of the Association (J.A. 168).

A valid and binding contract is not rendered void by the presence in that contract of a condition subsequent, when the condition never occurs. As noted elsewhere in this brief, the condition subsequent did not serve to render the agreement ineffective as a contract bar, but more important in this instance, under the common law of contracts, it did not serve to make the contract void or invalid, and such is the necessary assumption made by the Bakery Workers.

### C. CONCLUSION

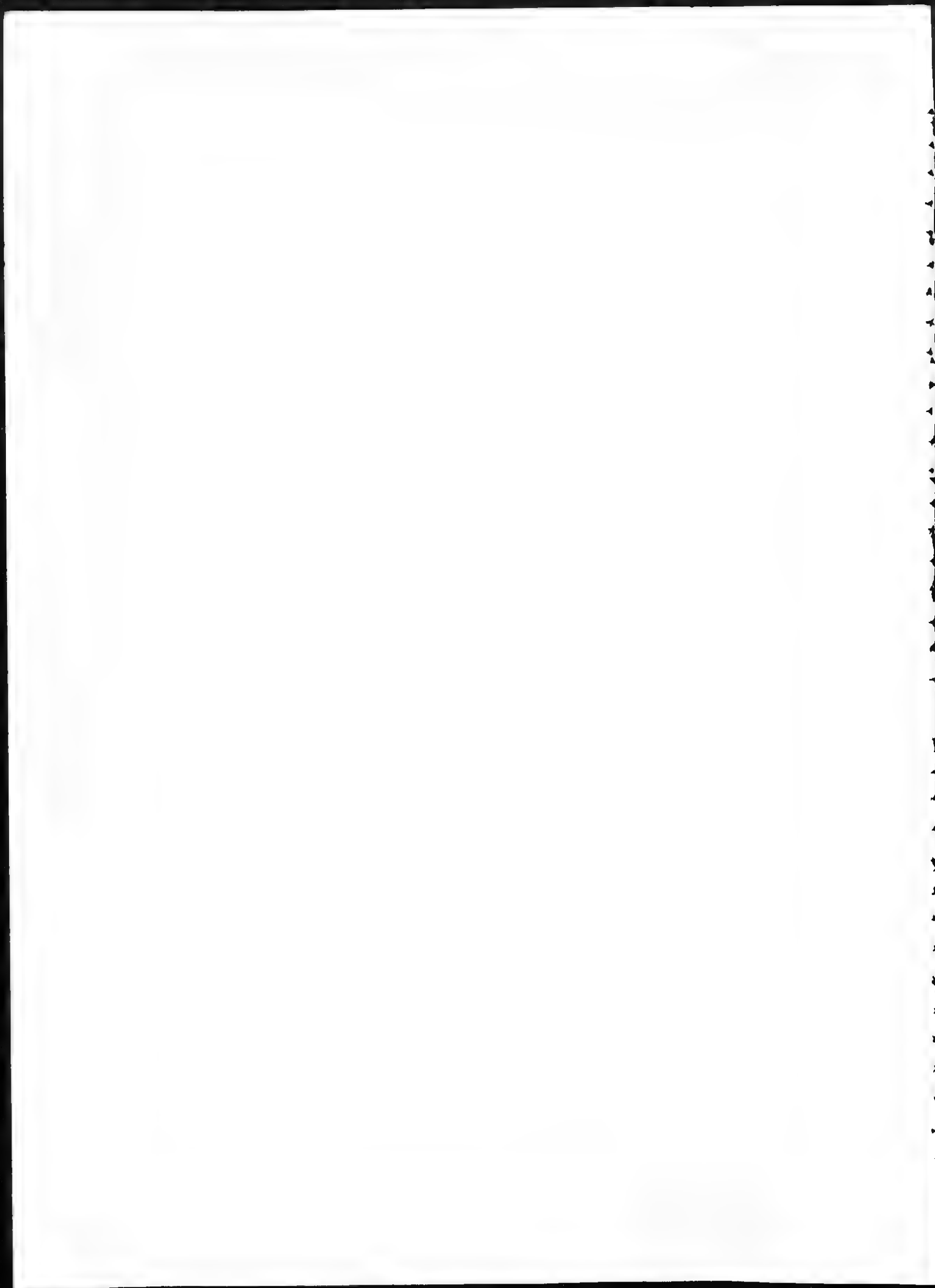
For the reasons stated in the Company's initial brief,

enforcement of the Board's order should be denied.

Thomas E. Shroyer  
SHROYER & DENBO  
1341 New Hampshire Ave., N.W.  
Washington, D. C.

Harry L. Browne  
James R. Willard  
SPENCER, FANE, BRITT & BROWNE  
1000 Power & Light Building  
Kansas City, Missouri

ATTORNEYS FOR GUY'S FOODS, INC.



BRID: FOR PETITIONER

---

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

500A  
NO. 20,347

GUY'S FOODS, INC.,

PETITIONER

VS.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE

AN ORDER OF THE NATIONAL LABOR

RELATIONS BOARD

United States Court of Appeals  
for the District of Columbia Circuit

FILED U. S. 1966

Thomas E. Shroyer  
SHROYER & DENBO  
1341 New Hampshire Ave., N.W.  
Washington, D. C.

Harry L. Browne  
James R. Willard  
SPENCER, FANE, BRITT & BROWNE  
1000 Power & Light Bldg.  
Kansas City, Missouri

ATTORNEYS FOR GUY'S FOODS, INC.

STATEMENT OF QUESTIONS PRESENTED

(1) With regard to the alleged violation of Sections 8(a)(2) and (1) of the National Labor Relations Act, as amended, the questions are:

(a) Was the February 14, 1965, agreement between the Company and the Association of Packers and Drivers Union effective on February 15, 1965, and a bar to the February 26, 1965, representation petition filed jointly by the Bakery Workers Union and Teamsters Union?

(b) Were the Company and the Association of Packers and Drivers Union entitled to a 60-day or a reasonable insulated bargaining period commencing February 5, 1965, constituting a bar to the February 26 representation petition filed jointly by the Bakery Workers Union and the Teamsters Union?

(c) Did the check-off of dues from February 26 constitute unlawful assistance to the Association of Packers and Drivers Union?

(2) Are isolated interrogations and alleged threats directed at approximately 10 employees in a bargaining unit of 450 employees, at two separate plants, over a period of six months, unlawful interference, restraint or coercion within the meaning of Section 8(a)(1) of the National Labor Relations Act, as amended?

(3) Did substantial evidence support the Board's finding that the discharge of Ina Faye Richardson on December 30, 1964, was a violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended?



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,347

GUY'S FOODS, INC.,  
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE  
AN ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD

BRIEF FOR PETITIONER,  
GUY'S FOODS, INC.

## SUBJECT INDEX

	<u>Page</u>
STATEMENT OF QUESTIONS PRESENTED .....	i
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF THE CASE .....	1
A. Background .....	1
B. The Alleged Assistance .....	4
C. The Alleged Coercion of Employees .....	6
D. The Richardson Discharge .....	8
STATUTES INVOLVED .....	10
STATEMENT OF POINTS .....	11
SUMMARY OF ARGUMENT .....	12
A. The Alleged 8(a)(2) Violations .....	12
B. The Alleged 8(a)(1) Violations .....	14
C. The Alleged 8(a)(3) Violation .....	14
ARGUMENT .....	15
A. The 8(a)(2) Allegations .....	15
B. The 8(a)(1) Allegations .....	25
C. The Alleged 8(a)(3) Violation .....	28
CONCLUSION .....	33

# TABLE OF CASES

	<u>Page</u>
*Appalachian Shale Products Co., 121 NLRB 1160, 1163 (1958) .....	20
B. M. Reeves, 128 NLRB 320, 322-323 (1960) .....	18
*Deluxe Metal Furniture Company, 121 NLRB 995 (1958) .....	21, 28
*Electric Boat Div., 158 NLRB No. 95, 62 LRRM 1132 (1966) .....	23
Ensher, Alexander & Barsoon, Inc., 74 NLRB 1443, 1445 (1947) .....	17
Frank Becker Towing Co., 151 NLRB 466 (1965) .....	24
Hemisphere Steel Products, Inc., 131 NLRB 56 (1961) .....	22
Midwest Piping & Supply Co., Inc., 63 NLRB 1060, 1069-71 .....	16
N.L.R.B. v. Ace Comb Company, 342 F.2d 841, 847 (8th Cir. 1965) .....	32
N.L.R.B. v. Arthur Winer, Inc., 194 F.2d 370, 374 (7th Cir. 1952) .....	29
N.L.R.B. v. Brown, 380 U.S. 278, 291; 85 S.Ct. 980, 988 (1965) .....	24
N.L.R.B. v. Express Pub. Co., 312 U.S. 426, 435-438 (1941) .....	27
N.L.R.B. v. Huber & Huber Motor Express, Inc., 223 F.2d 748 (5th Cir. 1955) .....	29
N.L.R.B. v. Local 3, IBEW, 362 F.2d 232, 236 (2nd Cir. 1966) .....	19
N.L.R.B. v. North Electric Co., 296 F.2d 137 (6th Cir. 1961) .....	17
N.L.R.B. v. Swift & Co., 294 F.2d 285, 288 (3rd Cir. 1961) .....	17
*N.L.R.B. v. Twin Table Furniture, 308 F.2d 686 (8th Cir. 1962) .....	26

# TABLE OF CASES - CONTINUED

	<u>Page</u>
Queen City Couch, 160 NLRB No. 19 (1966) .....	28
St. Louis Independent Packing Co. v. N.L.R.B., 291 F.2d 700, 704 (7th Cir. 1961) .....	17
*Salinas Valley Broadcasting v. N.L.R.B., 334 F.2d 60- (9th Cir.) .....	26
*Shattuck Denn Mining Corp. v. N.L.R.B., 362 F.2d 466, 469 (9th Cir. 1966) .....	29
*Shea Chemical Corporation, 121 NLRB 1027, 1029 (1956) .....	17
Siler Mill Co., 92 NLRB 1680, 1683 (1951) .....	18
Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488 (1951) .....	28
*Welsch Scientific Co. v. N.L.R.B., 340 F.2d 119 (2d Cir. 1965) .....	26

## REGULATIONS CITED

N.L.R.B., <u>Statements of Procedure</u> , Sec. 101.10(b)(1)	28
--	----

\*Cases or authorities chiefly relied upon are marked by asterisks.

## I. JURISDICTIONAL STATEMENT

This case is before the Court upon the Petition of Guy's Foods, Inc., pursuant to Section 10(f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.) to review and set aside the Order of the National Labor Relations Board issued against Petitioner on May 19, 1966. This Petition was initially filed in the United States Court of Appeals for the Eighth Circuit, but the case was transferred to this Court on Respondent's motion, and consolidated with Case No. 20,189, also a Petition (filed by the American Bakery and Confectionery Workers International Union, AFL-CIO, and Local Union No. 245) to review the above Order. The Board's decision and order are reported at 158 NLRB No. 89. The Board's jurisdiction is not in issue.

## II. STATEMENT OF THE CASE

### A. Background

This labor dispute involves three parties.<sup>1</sup> Guy's Foods, Inc., the Petitioner in this case (herein sometimes called the Company), is engaged in the production and wholesale distribution of potato chips, packaged nuts, and other food products (TXD 3/19-21).<sup>2</sup> Its principal office and plant is at Kansas

---

<sup>1</sup>The International Brotherhood of Teamsters, who initially joined with the Bakery Workers in 17-RC-4711, did not file objections to the election or unfair labor practice charges.

<sup>2</sup>The Trial Examiner's decision which was adopted by the Board will be cited as "TXD" with further reference to the page/ and line numbers. The Official Report of Proceedings will



City, Missouri, with branch plants located in Omaha, Nebraska, and Wichita, Kansas.

The Association of Packers and Drivers Union (herein called the Association) has been the certified representative of all the Company's production employees, including route salesmen, since December, 1956. Following certification, successive contracts were executed by the Company and the Association, including one due to expire February 15, 1965 (TXD 3/27-30).

After the Association had given the 60-day notice to reopen the existing labor contract between it and the Company, the American Bakery and Confectionery Workers (herein called Bakery Workers) on December 10 and 14, 1964, filed petitions for representation with the Seventeenth Regional Office of the National Labor Relations Board (herein called the Board), thus forestalling any bargaining between the Company and the Association until the question concerning representation was resolved. It was resolved by the Regional Director on February 5, 1965, by dismissal of the Bakery Workers petition (TXD 4/8-15). At the same time, however, the Regional Director denied the Company's request that it be given sixty days or a reasonable period of time after February 5 within which to negotiate with the Association. On February 14, the Company and the Association reached a new agreement. On February 26, the Bakery Workers and the International Brotherhood of Teamsters jointly filed another representation petition with the Board (TXD 4/21-33;

5/11-14). The Company and the Association contended (1) that the February 14 agreement barred the petition and (2) if it did not do so, the Company and the Association were entitled to a 60-day or reasonable period of time within which to bargain after the original dismissal of the Bakery Workers Petition on February 5 (TXD 5/20-30). The Regional Director denied these contentions on April 1, 1965, and directed an election which was held on May 5. The election was won by the Association, 257 votes for the Association and 127 votes for the Bakery Workers and Teamsters (TXD 3/33-36).

The Bakery Workers filed objections to the election and unfair labor practice charges because of events allegedly occurring since the preceding December, and a complaint was issued.

Briefly, the Board found the Company violated Section 8(a)(1), (2) and (3) of the National Labor Relations Act, as amended (herein called the Act), by carrying out the terms of the labor contract negotiated with the Association, engaging in interrogation and other coercive acts against the Bakery Workers and Teamsters, and discriminatorily discharging Ina Faye Richardson on December 30, 1964, for her activities on behalf of the Bakery Workers.

The evidence regarding the above findings is summarized below.

### B. The Alleged Assistance

In December, 1966, the Board certified the Association as the representative of all the Company's employees, including route salesmen, at its three plants in Kansas City, Missouri, Wichita, Kansas, and Omaha, Nebraska (TXD 3/24-28). Following certification, the Association and the Company negotiated successive labor contracts, including one of March 7, 1963, which was effective from February 15, 1963 (TXD 3/28-30). This agreement (Resp. Ex. #2) provided, inter alia, for the check-off of dues, and was to remain in effect as follows:

"This Agreement shall remain in full force and effect from February 15, 1963, to and including February 14, 1965, and shall continue thereafter successively for periods of one (1) year unless notice is given in writing by one party to the other not less than sixty (60) days prior to February 15, 1965, or to any anniversary date thereafter, of its desire to terminate, modify, or amend this Agreement, and, in such case, this Agreement shall continue in full force and effect until superseded by a new agreement." (Emphasis added)

On November 27, 1964, the Association gave notice by letter of its desire to modify and amend this contract and, on December 10, 1964, the Company replied suggesting negotiations begin after December 15, 1964 (Resp. Ex. #3).

On December 10 and 14, 1964, before negotiations commenced, the Bakery Workers filed three representation petitions seeking certification as the representative of separate units of the Company's employees at its three plants (Resp. Ex. #8). Upon receipt of the petitions, and a question of representation being raised, the Company and the Association refrained from

bargaining. After hearing, the Regional Director, Seventeenth Region, concluded by decision dated February 5, 1965, (Resp. Ex. #8) that the only appropriate unit for bargaining was one which included all the Company's employees and dismissed the three petitions.

The Association and the Company then began intensive bargaining and on February 14, 1965, reached an agreement which provided, inter alia, (1) for the checking of dues, (2) for wage increases, and (3) for an effective date immediately, to wit:

"This Agreement, executed this 14th day of February, 1965, shall be effective February 15, 1965. It is understood that this Agreement must be submitted to the membership of the Union for approval. If this Agreement is not approved by the membership, it shall terminate upon notice to the Company by the Union of such action by the membership." (Resp. Ex. #4, Emphasis added.)

On February 26, 1965, the Bakery Workers and Teamsters Union jointly filed a representation petition, 17-RC-4711, which Respondent received on March 2, 1965 (G.C. Ex. #1-LL; TXD 5/11-14).

On March 5, 1965, the Company at the request of the Association permitted its employees to hold a meeting on company property, during working hours, with no loss of pay. The purpose of the meeting was to approve or terminate the February 14 agreement.

At the representation hearing in 17-RC-4711, the Company contended that no question of representation was raised by the petition because (1) the petition was barred by the February 14, 1965, agreement, (2) the petition was untimely filed during the

60-day insulated bargaining period, which commenced February 5, 1965, and (3) in any event, the Association and the Company, by established Board doctrine, should have a reasonable period of time to exercise their certification and collective bargaining rights. The Regional Director dismissed these contentions (G.C. Ex. #1-MM), the Board denied the Company's Request for Review (G.C. Ex. #1-PP), and the Trial Examiner felt compelled, seemingly reluctantly, to follow the Board decision (TXD 15/27-30).

Preceding the election in 17-RC-4711 ordered by the Board on April 1, 1965, the Company orally and in writing expressed a preference for the Association, and permitted two of its supervisors to wear Association badges. Also, two supervisors jokingly pinned such a badge on two employees (TXD 15/43-46).

Over Company objection for reasons hereinabove mentioned, an election was held on May 5, 1965. The Association won the election in 17-RC-4711, 257 votes for the Association and 127 votes for the Bakery Workers and Teamsters (TXD 3/33-36).

During this period, the Company continued to check-off dues; the February 14 agreement was not terminated by the employees (TXD 13/11-12); and on July 9 and July 16, after the Association demand of June 14, 1965, the wage increases called for in the February 14 agreement were paid (TXD 13/10-19).

#### C. The Alleged Coercion of Employees

During the long period of organizational ferment of some five or six months, in which the Board entertained two separate



sets of petitions challenging the Association's representative status,<sup>3</sup> the only evidence the Board found of alleged coercion is as follows. Two Wichita supervisors, Alexander and Rolfe, asked isolated questions of employees Richardson and Peques, in November and December, 1964. These questions concerned what the Bakery Workers meeting was about (TXD 6/33); if an employee thought the CIO would help her (TXD 6/45); if the employee had signed a card (TXD 6/36) and why they brought in another union (TXD 6/46). In Kansas City, in May, 1965, supervisor Solomon asked Pardoe how she and others might vote, and asked Mealy why she was wearing a Bakery Workers badge (TXD 11/39-40; 12/1-10).

Statements were also allegedly made to six employees in Kansas City and Wichita over a period of six months, from November, 1964, to April, 1965. These statements concerned the closing of the plant (TXD 12/14-19), the possibility of loss of Christmas bonus (TXD 6/38, 44), the employees' right to quit if they were not happy (TXD 10/13-18), company loyalty (TXD 12/1-10) and the opinion that one employee was not half a man (TXD 6/25-26).

---

<sup>3</sup>The first Bakery Workers petitions were filed on December 10 and 14, 1964 (TXD 4/8). A hearing on these petitions was held on January 15, 1965 (TXD 8/45). These petitions were dismissed on February 5, 1965 (TXD 4/13). The joint Bakery Workers-Teamster petition was filed on February 26, 1965 (TXD 5/11-13). A hearing on this petition was held on March 18, 1965, and an election was directed on April 1, 1965 (TXD 5/30). This election was held on May 5, 1965 (TXD fn. 2).

Preceding the May 5 election, two supervisors wore Association badges for a short period and jokingly pinned Association badges on employees Tibbets and Thompson (TXD 12/28-35).

The wage increase which was found to be an independent violation of Section 8(a)(1) was pursuant to the new labor contract entered into between the Company and the Association on February 14, 1965.

#### D. The Richardson Discharge

The facts surrounding the discharge, on December 30, 1964, of Wichita employee Ina Faye Richardson by the plant manager Caldwell are not for the most part in dispute.

Richardson was employed by the Company in May, 1963. She, along with Wichita employees Seal, Burchett, and Tibbets (T. 320; 338-39), solicited card signatures during the Bakery Workers organizational efforts. Richardson was also active in the Association, being a shop stewardess for the organization (T. 344).

Richardson worked as a machine girl on the night shift. This shift must work from 1:30 p.m. until the work is finished at night and the machines are clean, without a fixed quitting time (T. 395). The reason for the uncertainty is that the night shift employees package all of the food products prepared that day, before cleaning the machines, and the amount of products to be packaged will vary (T. 395). It is essential in the food processing business that the machines be kept clean.

Prior to her discharge, Richardson had received two warnings regarding her work performance from Wichita plant manager Caldwell. In the late spring or early summer of 1964, an employee reported that Richardson was carelessly throwing potatoes into a bin in such a manner that she feared she would be hit with the potatoes. Caldwell reprimanded Richardson and Richardson stated it would not happen again (TXD 7/41-47). This later resulted in the employee quitting for the stated reason that Caldwell could not control potato throwing (T. 385). About a month or so later, a commotion occurred in the plant and work was disrupted. Upon investigation, it was determined that Richardson was responsible. Richardson was again reprimanded. She was told that this was a second offense and if another offense occurred, she would be discharged (T. 386-387; TXD 8/6-17). In the fall, before the Bakery Workers drive began, Caldwell told the Association that he had twice reprimanded Richardson and the next time she had to be called in she would be automatically terminated (T. 387).

Twice in December, once on the date of her discharge, Rolfe, Richardson's immediate supervisor, reported to Caldwell on Richardson's work performance, that Richardson was trying to "trade jobs" or "pick her crew," and disrupting operations (T. 388-389). Indeed, Richardson admitted Caldwell wondered if she was "trying to run the plant" or "trying to be a forelady" (T. 354). In addition, on December 30, when Richardson reported for work, she wanted to be assigned to a particular crew be-

cause she stated she was sick. Rolfe told Richardson that if she was sick she should go home, but permitted her to work when Richardson insisted she was able to work the full shift (TXD 8/19-24). Later, Caldwell found Richardson at the clock punching out before the clean-up of the machines was completed, a job which would have required an additional 20 minutes. Two other girls in the crew were still working (T. 386-390; TXD 8/25-30). Caldwell asked Richardson why she left before she was supposed to, and when Richardson replied she was sick, Caldwell told her if she was able to work eight hours, she could have completed the shift, as she asserted earlier (TXD 8/28-34). Caldwell at first left, and then recalling his earlier warnings to Richardson and that further cause would result in her discharge, reviewed her poor work performance, returned to the lounge where she was waiting for other employees to finish their work, and discharged Richardson (TXD 8/34-38).

### III. STATUTES INVOLVED

This case arises under the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, et seq.) The following sections are involved:

#### RIGHTS OF EMPLOYEES

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by

an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

#### UNFAIR LABOR PRACTICES

"Sec. 8(a) It shall be an unfair labor practice for an employer---

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization....

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

"Sec. 10(c)....And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope....No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause...."

#### IV. STATEMENT OF POINTS

(1) The Board erred by invoking the Midwest Piping doctrine and imposing a rigid duty of neutrality on the Company in its



dealings with the Association, because no real question of representation was then pending. The February 26 representation petition was barred by the February 14 contract, which was valid and binding from February 15, and, further, the petition was untimely filed during a period when the Association and the Company were insulated from such outside claims.

(2) The check-off of dues was pursuant to a valid contract and was not a violation of Section 8(a)(2) of the Act.

(3) Substantial evidence does not support the Board's finding that the Company violated Section 8(a)(1) of the Act. The Board erred in finding isolated inquiries and statements, and expressions of opinion, to be 8(a)(1) violations of the Act.

(4) Substantial evidence does not support the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discharging Ina Faye Richardson. The Board erred in finding that Richardson was discharged for her activities on behalf of the Bakery Workers and that the Company's reasons for her discharge were pretextual.

## V. SUMMARY OF ARGUMENT

### A. The Alleged 8(a)(2) Violations

With regard to the alleged violation of Section 8(a)(2), the Board invoked the so-called Midwest Piping doctrine in imposing an outright ban upon the Company in its dealings with the Association, the incumbent certified collective bargaining representative, when the Bakery Workers and the Teamsters filed a representation petition with the Regional Office of the Board on

February 26, 1965.

The Board improperly invoked the doctrine to find unlawful assistance for the following reasons: The doctrine can be applied only when the employer is presented with rival, conflicting claims that raise a real question of representation. The Company in this case was not presented with such a claim, and it was not required to refrain from continuing to recognize and deal with the incumbent Association, and may engage in cooperation as a proper attribute of the relationship.

The facts show that the Company and the Association had an existing collective bargaining relationship which was first established in 1956 when the Association was certified. In November, 1964, the Association gave notice to the Company that it wished to reopen the current contract. However, before bargaining could commence, it was forestalled by the Bakery Workers filing of representation petitions on December 10 and 14, 1964. These were not resolved until February 5, 1965, when the Regional Director dismissed the petitions. The Company and the Association then began intensive bargaining and reached an agreement on February 14, 1965. On February 26, the Bakery Workers jointly with the Teamsters filed another representation petition.

The Company contends that at the time of filing of this petition, a valid existing labor contract was in effect between the Company and the Association, and, therefore, the February 26 petition raised no real question of representation because

it was barred by the February 14 agreement. Irrespective of this fact, the petition was untimely, as it was filed during a period when the Company and the Association were entitled to bargain, insulated from the claims of outside unions, for a period of 60 days or a reasonable period of time after February 5. The check-off of dues was not illegal because the Company was under a legal obligation to continue to check-off dues.

B. The Alleged 8(a)(1) Violations

The alleged independent violations of Section 8(a)(1) of the Act consisted of simple inquiries made to four employees, unaccompanied by threats, and arguably threatening statements made to six employees in a unit of over 400 employees, over a period of six months, commencing in November or December, 1964, at two widely separated plants. The situation was created by the Board's processing of two separate representation petitions by international unions entertained by the Board against the incumbent independent union at a time when the Company and the Association should have been free to bargain without the disruption caused by such rival claims. It is the Company's contention that such isolated acts, in the circumstances, do not constitute unlawful interference, restraint and coercion, and, in any event, cannot support the broad cease and desist order of the Board.

C. The Alleged 8(a)(3) Violations

With regard to the alleged discriminatory discharge of

Ina Faye Richardson in violation of Section 8(a)(3), the Company contends that substantial evidence does not support the Board's finding of discrimination and does not support the conclusion that the reasons given by the Company for the discharge were pretextual. Substantial evidence shows that Richardson was discharged for refusing to work overtime after receiving two warnings about her work performance. In any event, the substantial evidence at least equally supports the inference of lawful motive.

## VI. ARGUMENT

### A. The 8(a)(2) Allegations

As previously noted, the Association had been the certified bargaining representative of the Company's employees since 1956. Since that date, collective contracts had been negotiated and agreed upon. After the Association served notice to reopen the then current contract on November 27, 1964, the Bakery Workers filed a petition for certification raising a question concerning representation, thus forestalling bargaining. The Regional Office did not hand down its decision until February 5. Since this hardly was enough time for normal negotiations, the then current contract having a terminal date of February 15, the Company and the Association asked for a 60-day or reasonable period of time after February 5 to engage in bargaining. This was denied by the Regional Director. As a result of intensive negotiations (and we would submit not ordinarily the type of

salutary and reflective negotiations contemplated by the Act to encourage the process of free collective bargaining), an agreement was reached on February 14, 1965, subject to defeasance as a condition subsequent should the agreement not be ratified by the Company's employees. But during the process of ratification, the Board entertained another petition on February 26 filed by the Bakery Workers and Teamsters. After a hearing of this petition, the Regional Office directed an election, over the protests of the Company and the Association that the Board was disregarding the contract then executed by the Company and the Association, and also was disregarding its own well established policy of allowing a collective bargaining representative an insulated period of time within which to bargain without the unsettling and disruptive claims of rival unions.

In this context, after February 5, the Company and the Association believed they could deal with each other as an employer vis-a-vis a certified bargaining agent. It believed it could do so in the circumstances on February 26. The Board, however, refused to honor the labor contract already agreed upon and refused to give the Company and the Association an insulated period for carrying out their obligations to each other. The Board invoked the Midwest Piping doctrine<sup>4</sup> and found that the Company violated Section 8(a)(2) and 8(a)(1) of the Act by

---

<sup>4</sup>Midwest Piping & Supply Co., Inc., 63 NLRB 1060, 1069-71.



permitting the Association to hold a ratification meeting on March 5 and urging the employees to attend; by expressing a preference for the Association; by continuing to check-off dues as required by the old and new contracts; and by paying wage increases negotiated under the new contract.

The Midwest Piping doctrine relied on by the Board imposes upon an employer a duty of strict neutrality when it has knowledge or is chargeable with knowledge of conflicting claims by rival unions which raise a real question of representation. N.L.R.B. v. North Electric Co., 296 F.2d 137 (6th Cir. 1961); St. Louis Independent Packing Co. v. N.L.R.B., 291 F.2d 700, 704 (7th Cir. 1961). The doctrine has been subject to continual re-interpretation by the Board, and it is well recognized by both the Courts and the Board that the doctrine has limitations. N.L.R.B. v. North Electric Co., supra; N.L.R.B. v. Swift & Co., 294 F.2d 285, 288 (3rd Cir. 1961); Shea Chemical Corporation, 121 NLRB 1027, 1029 (1958). The Board concluded early that the doctrine "necessary though it is to protect freedom of choice in certain situations, can easily operate in derogation of the practice of continuous collective bargaining, and should, therefore, be strictly construed and sparingly applied." Ensher, Alexander & Barsoon, Inc., 74 NLRB 1443, 1445 (1947). In Shea Chemical, supra, at 1029, the Board in clarifying the doctrine stated:

"We now hold that upon presentation of a rival or conflicting claim which raises a real question concerning representation, an employer may not go so far as to bargain collectively with the incumbent (or any other) union unless and until the question concerning repre-

sentation has been settled by the Board. This is not to say that the employer must give an undue advantage to the rival union by refusing to permit the incumbent union to continue administering its contract or processing grievances through its stewards.... However, we wish to make it clear that the Midwest Piping doctrine does not apply in situations where, because of contract bar or certification year or inappropriate unit or any other established reason, the rival claim and petition does not raise a real representation question."

The precise threshold question presented then is this, did the representation petition filed February 26 raise a real question of representation, or was it a bare, specious, untimely claim which will not invoke the doctrine? The resolution of this question is essential to the determination of the alleged Midwest Piping Section 8(a)(2) violations.<sup>5</sup>

The Board acknowledged that the February 14 agreement was negotiated and signed during a period when no representation issue was pending, and conceded that, if the February 14 agreement was valid and binding before the filing of the February 26 representation petition, the Midwest Piping doctrine was not applicable and the Company could deal with the Association as it did with immunity.<sup>6</sup> But the Board held the February 14 agree-

---

<sup>5</sup>For this reason, the contract bar issues are properly before this Court upon the Company's petition, although the Board refused to so stipulate.

<sup>6</sup>B. M. Reeves, 128 NLRB 320, 322-323 (1960), is almost precisely in point on the assistance rendered (including allowing the use of company time and property to meet and solicit employee signatures in approval of the contract), if no question of representation is raised by the Bakery Workers petition. Also see, Siler Mill Co., 92 NLRB 1680, 1683 (1951).

ment was not binding until ratified by the employees, which had not occurred at that time. The interpretation of the contract clause set out above is necessary to resolve this contract bar issue. If the February 26 petition was barred by the existence and validity of the February 14 agreement, it raised no real question of representation.<sup>7</sup>

Traditional principles of contract interpretation require the conclusion that the February 14 agreement was effective, valid and binding from February 15. Ratification was not a condition precedent to the effectiveness of the agreement, and it therefore constituted a bar to the representation petition. Indeed, approval by the employees was clearly a condition subsequent to the effectiveness of the contract, because the language clearly states, "If this Agreement is not approved by the membership, it shall terminate upon notice to the Company by

---

<sup>7</sup> It should be noted that the contract bar doctrine, while not expressly set out in the Act, has been treated by the Board and the Courts as written into the Act. In N.L.R.B. v. Local 3, IBEW, 362 F.2d 232, 236 (2d Cir. 1966), the Court stated:

"[8] There remains only the question of whether Local 3's picketing took place at a time when it would have been proper to raise a question of representation. It is the Board's position that at the time that Local 3 picketed, the collective agreement between the Association and Local 199, to which Darby was a party, constituted a bar to the selection of representatives. While the contract bar rule is not statutory (but see Fay v. Douds, 172 F.2d 720, 724 (2d Cir. 1949) 'we assume that the "contract bar" is, as it were, written into the statute'), it has received judicial recognition." (Citations omitted)

the Union of such action by the membership." Further, traditional contract principles have been followed by the Board in interpreting such clauses in such cases. In Appalachian Shale Products Co., 121 NLRB 1160, 1163 (1958), the Board found that the purposes of the Act required the implementation of the following rule:

"Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar." (Emphasis added)

Here the contract not only fails to express a condition precedent; it clearly expresses a condition subsequent. Even the Trial Examiner commented, "The Board's holding in this regard, irrespective of my own opinion as to its correctness, precludes me from giving any consideration to the question whether that issue was correctly decided, as Respondent contends I should." (TXD 15/27-30)

We respectfully submit that accepted principles of contract interpretation and established Board policy in this field require that the contract be so construed and be held a bar to the representation petition.

Yet another reason exists which prevents the February 26 representation petition from raising a real question of representation sufficient to invoke the application of the Midwest Piping doctrine. The petition was filed during an insulated bargaining period and was therefore not timely and should have been

dismissed. In Deluxe Metal Furniture Company, 121 NLRB 995 (1958), the Board reviewed its contract bar policies and enunciated an elaborate set of rules regarding the timeliness and sufficiency of representation petitions. The Board found that "in the interest of attaining more expeditious disposition of representation cases and of achieving a finer balance between the oftentimes conflicting policy considerations of fostering stability in labor relations," the purposes of the Act could best be effectuated by establishing a specific period for the timely filing of a representation petition by a rival union and by establishing a 60-day insulated bargaining period during which the employer and the incumbent union might negotiate and execute a new or amended agreement without the intrusion of a rival petition. This 60-day period was also implemented because: "It will also prevent the threat of overhanging rivalry and uncertainty during the bargaining period, and will eliminate the possibility for employees to wait and see how bargaining is proceeding and use another union as a threat to force their current representative into unreasonable demands." 121 NLRB 1000-01.

As stated, in the instant case, the Bakery Workers on December 10 and 14, 1964, filed three representation petitions prior to the start of the usual 60-day insulated bargaining period (from December 15, 1964, to February 14, 1965). The filing of these petitions tolled the commencement and running of the 60-day period until February 5, 1965, when they were dis-



missed by the Regional Director. The 60-day period thus began on February 5, 1965, and the Association and the Company should have been permitted 60 days, or certainly a reasonable period of time, in which to bargain and reach agreement on a new contract or modification of the 1963 agreement.

By processing the petition of February 26, the Board arbitrarily disregarded the established policies of Deluxe Metal. Clearly, the processing of this petition and the direction of election created the very situation which the Board sua sponte said should not be permitted to exist under the Act. For example, the Association and the Company were insulated from outside claims for a period of nine days, from February 5 to February 14, and it certainly cannot be said that this was sufficient time, or a reasonable time, to bargain collectively as conceived by the Act.

Thus, the refusal of the Board to grant the Company and the Association this 60-day insulated period, or a reasonable period, by dismissing the representation petition on the grounds of untimeliness results in an arbitrary, capricious and uneven application of established Board policy to the detriment of the Company, the Association and the employees. The Board has rigidly held to its 60-day period policy. For example, in Hemishpere Steel Products, Inc., 131 NLRB 56 (1961), a petition filed on the sixtieth day preceding the contract expiration day (involving an incumbent national union), instead of on the sixty-first day, was held to be untimely filed.

In several other cases, the Board and the Courts have held that, at least, the Association, by its certification, and the Company are entitled to a reasonable period in which to negotiate, and that period is usually sixty days. Electric Boat Div., 158 NLRB No. 95, 62 LRRM 1132 (1966), is almost an exact parallel to the case at bar. In that case, the contract between the company and the incumbent union (a national union) was to expire on November 5, 1965. The rival union filed a petition 35 days before this expiration date. The Regional Director, while acknowledging that the petition was untimely because it was filed during the 60-day period, nonetheless found dismissal of the petition was not warranted because his decision was issued after the contract expiration date. Four members of the Board overruled the Regional Director, cited Deluxe Metal and subsequent decision applying that doctrine, and concluded:

"As a consequence, the parties have not had the opportunity to bargain, as contemplated by our Deluxe Metal rule, free from the 'threat of overhanging rivalry and uncertainty' for a 60-day insulated period. Accordingly, to effectuate the policies underlying our insulated period rule, the petition herein will be dismissed and no new petition for the subject employees will be entertained for a period of 60 days from the date of this decision on Review and Order...."

The principle there enunciated is exactly what the Company and the Association sought before the Board. Applying that decision to this case, it is clear that the policies of the Act require that the Association and the Company have 60 days, or a reasonable period, to bargain from, at least, February 5, 1965. Thus, the February 26 petition is untimely.

The same policy is followed by the Board elsewhere. In Frank Becker Towing Co., 151 NLRB 466, the Board dismissed a representation petition filed within four months of the execution of a settlement agreement which required the Company to bargain with another nationally affiliated union. The Board held that the union was entitled to a reasonable length of time to negotiate. There it was at least four months. Here, the parties were given nine days! If the Board, in its determination, considered the fact that the Association was an independent, such an uneven application of Board decisional doctrine contravenes the express provision of Section 10(c) of the Act, which provides for an evenhanded application of Board doctrine whether or not the labor organization is affiliated with a national or international union.

Thus, it is beyond comprehension why the Board refused to invoke the policy here and, further, refused to explain its rationale. In this area, this Court, in reviewing Board decisions, is "not obliged to stand aside and rubber-stamp their affirmation of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." N.L.R.B. v. Brown, 380 U.S. 278, 291; 85 S.Ct. 980, 988 (1965).

For the above reasons, the Midwest Piping doctrine should not have been invoked and the Section 8(a)(1) and Section 8(a)(2) findings should not be enforced.

Company also urges that if, arguendo, the February 14

agreement is not valid, the 1963 agreement by its language, noted above, remains in effect. Thus, the continued checking of dues and the administration of this contract (which contract, incidentally, is then still binding, although not a bar to an election) cannot be held to contravene the Act. Company cannot be confronted with a duty enforceable under Section 301 of the Act to check dues and administer the contract and still be required under Section 8(a)(2) to maintain a duty of strict neutrality. The expression of a preference for the Association cannot be a violation of Section 8(a)(1) or Section 8(a)(2).

B. The 8(a)(1) Allegations

In the instant case, the record shows that one or two questions were directed to employees Peques, Richardson, Pardoe and Mealy. The conversations with Peques and Richardson took place in Wichita, in November and December, 1964. The conversations with Pardoe and Mealy took place in Kansas City in May, 1965. There was no intensive interrogation, no "pattern of interrogation," and certainly no "coercive interrogation." Each incident lasted only a few seconds or minutes and involved four employees out of over 400 eligible to vote. Two questions -- "Do you think the CIO will help you?" and "Why are you wearing a Bakery Workers badge?" -- were argumentative and rhetorical, to which a reply was not expected. The other questions were not, except in one instance, accompanied by threats or further inquiry.

The alleged threats were also isolated. Only on two occasions could the alleged threat be said to involve the loss of

benefits--the reference to the loss of Christmas bonus and plant closing--and it is clear these lower level supervisors were expressing their own opinions. These opinions were at no time ratified or expressed by higher management.

In fact, to avoid finding isolated instances, the Board found that uncoercive statements such as -- "If you were half a man, you would have told me what was going on." "If you had a lick of sense you would take the Bakery Workers sticker off." "Do you think the CIO will help you?" "Vote for the Association." -- were seized upon to make it appear that there was an "intensive interrogation" or "extensive threats."

On overall analysis, the incidents fall clearly within the cases which stand for the principle that "interrogation, not itself threatening, is not held to be an unfair labor practice unless it meets fairly severe standards." Welsch Scientific Co. v. N.L.R.B., 340 F.2d 119 (2d Cir. 1965). Further, isolated questions concerning how an individual is going to vote, how other employees are going to vote and what caused the whole thing, do not constitute unlawful interrogation, but rather were protected free speech. N.L.R.B. v. Twin Table Furniture, 308 F.2d 686 (8th Cir. 1962).

In Salinas Valley Broadcasting v. N.L.R.B., 334 F.2d 604, 614 (9th Cir.), the Court concluded:

"Neither mere inquiry by employer of employees, without harassment or undue frequency, as to the fact of the existence of a plan to unionize, nor a single somewhat vague prediction of anticipated loss of economic benefits can be transformed or transmuted by the magic of semantic labels into



'repeated interrogation' or 'threats of economic reprisals' sufficient to swing the balance against the other facts in the record."

Finally, we would submit the guarantee of free speech of the constitution and the related Section 8(c) exemption of the expression of opinions and views should govern the actions here. Surely, in any event, such isolated incidents do not justify the broad cease and desist provisions in the Board's order. N.L.R.B. v. Express Pub. Co., 312 U.S. 426, 435-438 (1941).

We believe further that such instances as occurred must be considered in the light of the then prevailing situation. During this period of some six months, the Company's plants were the situs of constant turmoil. The turmoil, we submit, was of the Board's own making--instead of creating industrial stability, it created industrial unrest. At a time when the Association and the Company were to engage in collective bargaining, the Board sat on the petition filed by the Bakery Workers from December 14, 1964, to February 5, 1965, a period of almost two months. Then, when a decision was finally handed down, it allowed but nine days to the principal parties within which to try to reach agreement, a period outrageously short for sound collective bargaining negotiations and subsequent ratification, and then entertained and processed another petition on February 26, and kept the climate in ferment until an election on May 5. Thus, the Board, to paraphrase its own terminology (in other cases) encouraged the "threat of overhanging rivalry and

uncertainty during the bargaining period," and enhanced the "possibility for employees to wait and see how bargaining is proceeding and use another union as a threat to force their current representative into unreasonable demands." Deluxe Metal Furniture Co., 121 NLRB at 1000-01. It would take but little expertise to predict that what might happen, did happen, and, while we do not condone any acts of coercion, however isolated, it is ironic that the groundwork for such acts as did occur, was laid by the Board itself by its refusal to adhere to its own rules. Indeed, one might say that in the situation fashioned by the Board, it is surprising that more did not occur.

C. The Alleged 8(a)(3) Violation

The principal issue involved in determining whether Richardson was discriminatorily discharged is one of substantial evidence. The Board has the burden of showing discrimination by "the preponderance of the reliable, probative, and substantial evidence." N.L.R.B., Statements of Procedure, Sec. 101.10(b)(1); Administrative Procedure Act, Sec. 7. The Board also has the burden of proving that the reasons offered by the Company to explain the discharge were pretextual. Queen City Couch, 160 NLRB No. 19 (1966).

In reviewing such finding of the Board, the Supreme Court, in Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488 (1951), admonished:

"The reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light

that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." (Emphasis added)

In this case, the Board found the Company was aware that Richardson was an "active Bakery Workers supporter" and the Company was opposed to the Bakery Workers, "as evidenced by the events at Wichita and Kansas City before and after discharge."<sup>8</sup>

However, Company contends that the substantial evidence supports the finding that the discharge was nondiscriminatory for the reasons given by the Company. At least, the substantial evidence equally supports an inference of lawful motive and "the Board may not infer an unlawful motive if the evidence equally supports an inference of lawful motive." Shattuck Denn Mining Corp. v. N.L.R.B., 362 F.2d 466, 469 (9th Cir. 1966), citing N.L.R.B. v. Huber & Huber Motor Express, Inc., 223 F.2d 748 (5th Cir. 1955), and N.L.R.B. v. Arthur Winer, Inc., 194 F.2d 370, 374 (7th Cir. 1952).

The evidence, contrary to the Board's inference, shows that Richardson was reprimanded in the summer, prior to her discharge, when she disrupted operations by throwing whole potatoes in a manner to strike or injure others. A month after this reprimand, Richardson was again reprimanded because an investigation revealed Richardson had disrupted operations, again, with horse-

---

<sup>8</sup>Certainly, fragmentary evidence supports this view, but the Company was aware that others were active Bakery Workers supporters, including Paul Seal, a leading Bakery Workers organizer who first contacted that union and who solicited employees to join (T. 300-01, 306). Seal opened up an opportunity for his discharge by spoiling potato chips, a cause which the Company could have seized upon for a pretext had this

play. These two incidents caused Caldwell to admonish her that if he had to reprimand her again she would be terminated, and comment to Association officers at a meeting in the fall prior to the advent of Bakery Workers activity, that if he had to warn Richardson again, he would discharge her. In addition, Caldwell was informed by Rolfe, Richardson's supervisor, that Richardson was unilaterally "switching crews" or "trading jobs," which disrupted operations. Even Richardson admitted that Caldwell wondered openly if "she was trying to be a floor lady." Finally, there is no question that when Richardson came to work on December 30, she mentioned she was sick but insisted that she could work a full shift if she was allowed to work, including the cleaning of machines. However, she quit early, before the cleaning of the machines was finished and before the crew had completed the work. Caldwell, after recalling his previous warnings to her and Richardson's work record, thereupon discharged her.

The Board, however, concluded that the incident was a pretext seized upon by Caldwell "to rid himself" of a Bakery Workers supporter, because (1) it had been four months since the last warning; (2) the matter involved was not of the same nature that caused Caldwell to warn Richardson previously; (3) that Caldwell's "only" complaint could have been that Richardson did not clean the machines; and (4) Caldwell did not so inform Richardson when he first spoke to her in the lounge (TXD 16/32-54).

The four-month interim does not support a pretext finding.

Timing of the warnings is only relevant if the previous matters had been forgiven or forgotten. Neither had occurred and Caldwell, in the fall, had advised the Association of the effect of a third reprimand. The reports concerning Richardson's attempted "job trading" given him by Richardson's supervisor, including one the day of the discharge, kept the Richardson performances present in his mind.

Further, the incident leading to the discharge was not unrelated as the Board argued, but was of the same general nature as the previous warnings in that they all involved disruption of production, albeit by horseplay, or by leaving work before the work was done. Further, there is no requirement (under Company policy, under the Act, or in the labor agreement) that a different series of warnings be established for each specific type of misconduct.

The Board attempts to minimize Caldwell's complaint by holding that it was only a failure to work overtime to clean machines that he complained of. A failure to keep the equipment clean in any food processing plant is a much more serious offense than other types of derelictions. The possibility of contaminated food being eaten by the public is serious, and both federal and state agencies with broad powers inspect food plants to find just such failures. Caldwell's complaint did not involve a minor incident; his complaint went to the heart of a food processor's problem. Involved was a serious infraction which could not be ignored.



Finally, the Board emphasizes that Caldwell did not fire Richardson at once and implies that it would have approved immediate discharge. But, in fact, the delay emphasizes that Caldwell did consider the previous warnings, his conversation of that day with her supervisor, and his statement at the Association meeting. Contrary to the arbitrary inference made by the Board, the delay clearly demonstrates that there was no preconceived notion to discharge her; it rather emphasizes a considered judgment based on Richardson's previous work record, and the current incident which triggered the discharge.

It is submitted that the Board has based its conclusion of pretext solely because, in its judgment, it would not have discharged Richardson for this offense. This is not the function of the Board.<sup>9</sup> When, as here, there is no evidence of condonation, disparate treatment, or disparate enforcement of work rules, which might indicate a pretext, the Board may not depart from the record to support its conclusion. A preponderance of the substantial evidence cogently demonstrates a lawful motive. From a viewpoint most favorable to the Board, the evidence at

---

<sup>9</sup>In N.L.R.B. v. Ace Comb Company, 342 F.2d 841, 847 (8th Cir. 1965), the court stated:

"...It must be remembered that it is not the purpose of the Act to give the Board any control whatsoever over an employer's policies....once it is determined that disciplinary action is warranted the extent of the action taken is purely within the discretion of the employer, and the Board may not substitute its management for that of the employer."



least equally supports a finding of lawful motive. The Board's order in such circumstances must be set aside.

VII. CONCLUSION

For the foregoing reasons, we respectfully submit that the Board's order be set aside in its entirety.

Thomas E. Shroyer  
SHROYER & DENBO  
1341 New Hampshire Ave., N.W.  
Washington, D. C.

Harry L. Browne  
James R. Willard  
SPENCER, FANE, BRITT & BROWNE  
1000 Power & Light Bldg.  
Kansas City, Missouri

ATTORNEYS FOR GUY'S FOODS, INC.